



A P P E N D I X

TO THE

T R E A T I S E

O N

AGISTMENT TITHE.



P P E N D I X

TO THE

T R E A T Y

OF

AGRICULTURE

AND

COMMERCE

AND

MANUFACTURES

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T O T H E
T R E A T I S E
O N
A G I S T M E N T T I T H E,

Containing COPIES at Large of the
BILL, ANSWERS, and DECREE
In the Court of Exchequer, Easter Term, 1774,

IN THE CAUSE OF
BATEMAN against AISTRUP, and others,
For the TITHE of the AGISTMENT of SHEEP, and of
BARREN and UNPROFITABLE CATTLE,

To which is added

A COPY of the ORIGINAL ENDOWMENT, under which
the Plaintiff's Right to those TITHES was claimed
and allowed.

AND ALSO

A COPY of His whole BILL of COSTS, from the Com-
mencement to the Conclusion of the CAUSE.

With Explanatory NOTES and OBSERVATIONS on the Whole.

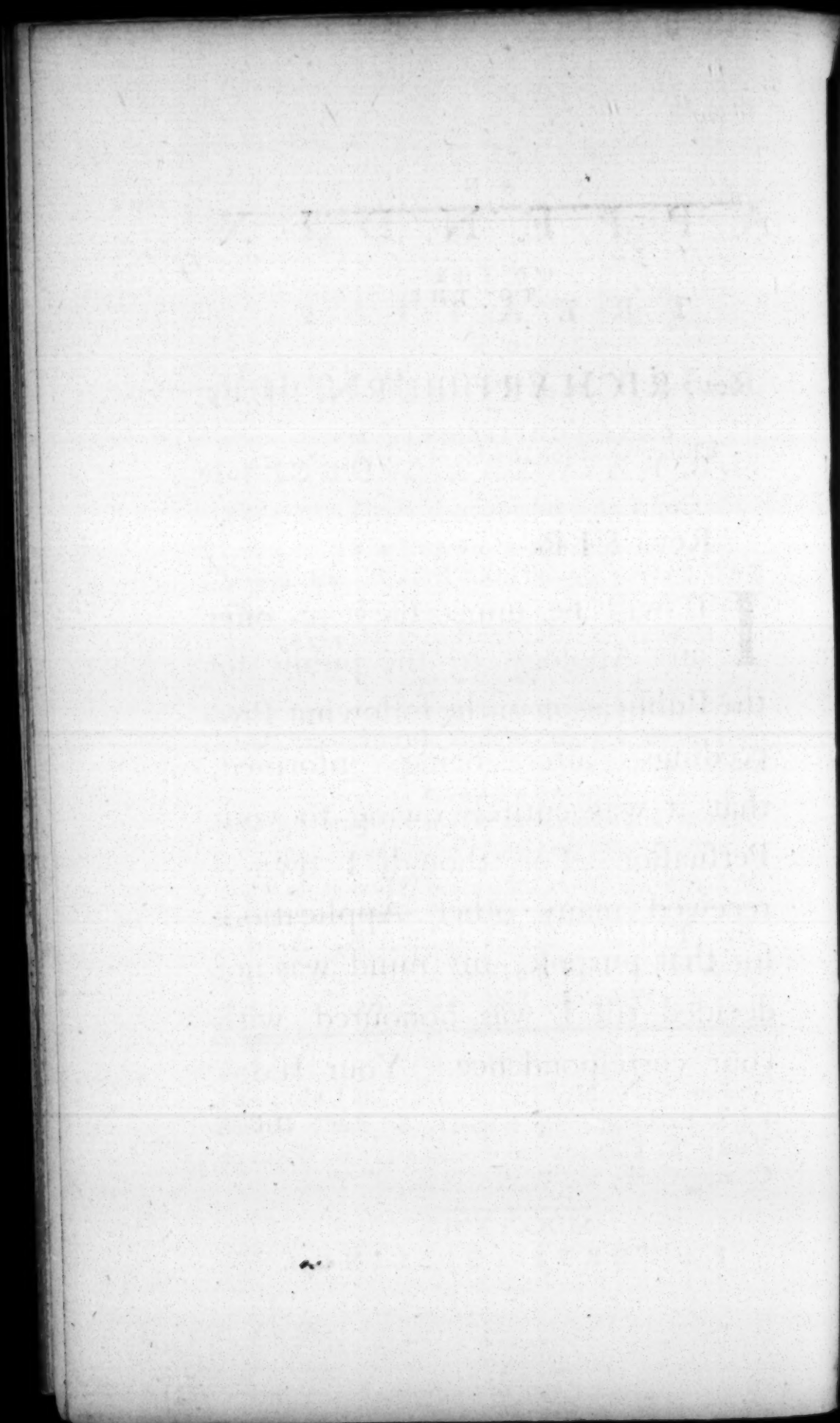
By THO: BATEMAN, A.M. K.
Chaplain to his Grace the Duke of GORDON, Vicar of
Whaplode, Lincolnshire, &c.

L O N D O N:

Printed and sold by Mess. RICHARDSON and URQUHART,
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Charing-Cross; and W. TESSEYMAN, York.

MDCCLXXIX.

Price THREE SHILLINGS.



TO THE

Rev. RICHARD BURN, LL. D.

Chancellor of the Diocese of *Carlisle*, &c. &c.

Rev. SIR,

IT will be unnecessary to offer any Apology to the public for the Publication of the following Proceedings, after being informed, that it was entirely owing to your Persuasion. For though I own I received many other Applications for that purpose, my mind was not decided till I was honoured with your correspondence. Your Judgment

vi DEDICATION.

ment alone would have been sufficient to have determined my own on the occasion—but the Reasons you were pleased to alledge for it, left me no Alternative.

I therefore now beg leave to present it to you; and at the same time to apologize for the Notes,—which—contrary to your Advice, I have added to each of the Proceedings. For though, to you they may be unnecessary, I am persuaded they will be found of some use to others:—At least, like all other Notes, the Reader may refer to them

DEDICATION. vii

them or not, as he pleases, or finds occasion.

The Character and Abilities of the Rev. Dr. Burn are too universally known and too highly approved of, to stand in need of any Advocates or require any Encomiums—an impartial public has long ago done equal Justice to both—if it is possible to do adequate Justice to so much merit, and to the man to whom mankind in general are under so many and such great obligations.

I shall not here enumerate how much I have myself been indebted,
on

viii DEDICATION.

on many Accounts, to your very
learned and useful Labours—for
which however you will please to
indulge me in this public acknow-
ledgment, and to accept of my best
Thanks. I am, with the utmost
Respect and Esteem,

Rev. SIR,

Your Most Obligated and

Most Obedient Humble Servant,

THO: BATEMAN,

WHAPLODE,
May 1, 1779.

THE BIBLE

on many accounts, to your very
great and constant labours - for

rich however you will please to

include me in the number of those

who are to be benefited by the

fruits of your labours

Yours very truly

Wm. A. F. M.

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This Day was published, Price 3s.

The Second Edition, with large Additions, of

A
T R E A T I S E
O N
AGISTMENT TITHE.

In which the Nature, Right, Objects, Mode of Payment, and Method of ascertaining the Value of each Species of it are fully stated and explained, as settled in pursuance of a Decree in the Court of Exchequer, Easter Term, 1774.

By THO. BATEMAN, A.M.

Chaplain to his Grace the Duke of Gordon, Vicar of Whaplode, Lincolnshire, &c.

London: Printed and sold by Mess. Richardson and Urquhart, Royal Exchange; W. Nicoll, St. Paul's Church-Yard; T. Cadell in the Strand; J. Walter, Charing-Cross; and W. Tesfeyman, York.

Of whom also may be had,

Mr. BATEMAN'S

MILITARY SERMON,

Preached before Sir George Savile's Regiment of Yorkshire Militia, and a Company of the Royal Regiment of Artillery, at Fornham Camp, Aug. 2, 1778.

P R E F A C E.

IN the Preface to the first Edition of the Treatise on Agistment Tithe, the Author mentioned his having at first had an intention of publishing the following Proceedings in his Cause along with it ;— but from a diffidence of his own Opinion both as to the Necessity and Propriety of such a Publication, had afterwards resolved to defer it, till that of his Readers should on either Account deem it requisite— chusing rather to be determined in such a Case by their judgment than his own.

But so rapid was the sale of the Treatise—a thousand Copies having been sold off in little more than six Months—that he was not favoured with the Sentiments of such Persons as he thought necessary to

xii P R E F A C E.

decide his own upon the Subject, till after he found there had been such a demand for a Second Edition, that it was perfectly finished and sent to the Press. It would otherwise have been a more eligible Mode to himself, and perhaps to his Readers, to have had it published at the same Time, and annexed to the second Edition.

It is now published at the particular request of several Persons of eminent Stations and distinguished Abilities, who strongly pressed it, as necessary to authenticate several of the Positions and Doctrines advanced in the Treatise; and who freely expressed their Opinions, that—from the Boldness and Novelty of them, such Positions and Doctrines ought not to be left to rest merely on the Author's own *ipse dixit*—whilst it was in his power to produce the Proceedings requisite to give the proper Sanction to them.

These Reasons alone—especially from such Persons—would have determined the
Author

Author with respect to the present Publication. But he was afterwards urged by still stronger Motives—Some Objections, which the Reader will find mentioned in the Notes,—were alledged against the very Principles upon which the Treatise all along proceeded, by several and some very eminent Counsel—who asserted that the Author must have mis-stated his own Case, and that the Decree ought not to be understood in the Latitude laid down in his Treatise. It then became a matter of Vindication not only of his Treatise but of himself—As such therefore he now offers it to the Public—and to the impartial Judgment of that Public he humbly submits it to be decided what weight any such Objections can hereafter or ought to have ;

The ordering part of the Decree—which is the only part concerning which any dispute could arise and to which alone the Treatise relates,—is—it is presumed—too plain to admit either of a double or a doubtful

xiv P R E F A C E.

doubtful Meaning. In the Proceedings subsequent to and in pursuance of it, it was brought four Times before the Master in Chancery or Deputy Remembrancer of the Court of Exchequer, who himself always understood and interpreted it to all the Parties concerned in the Sense there fully and fairly explained; and enforced such Sense and Interpretation by as many Commissions for the Defendants to account accordingly: All therefore that is requisite to add further here is—that every thing stated in the Treatise was actually done, as so stated, in pursuance of the Decree, and that nothing was done but in consequence and under the Sanction and Authority of a Commission out of the Court of Exchequer for that Purpose.

Admitting therefore that the Author could not be mistaken in the meaning of the Decree—both himself and all the other Parties concerned, being never left to their own judgment, but having the very Sense and Meaning of every part of it, intended by

P R E F A C E. xv

the Court, *bound upon them and enforced afterwards all along by so many several Commissions from the Court itself*—it will, he hopes, be found that he can have no ways mis-stated his Case. So far and no farther he considers himself answerable.

For should any objections be urged against the Decree itself—either as to its Novelty or on any other Account, such Objections he conceives will go much higher than either to the Author, or the Solicitors, and Commissioners who acted under the Commissions in Pursuance of the Decree; or even to the Deputy Remembrancer, who, under the Authority of the Court of Exchequer, issued all those Commissions—Such Objections will at last go to the Court itself—to the Persons who made the Decree—the Barons themselves—who unless what is Law and Equity in one Man's Case, may not be so in another's—will answer all such Objections, with the same Flail of Office—a similar Decree.

Speedily will be published,

A

T R E A T I S E

O N

TITHE-FREE LANDS:

In which all the Requisites to a legal Exemption from the Payment of Tithes are fully stated and explained.

By THO: BATEMAN, A.M.

Chaplain to his Grace the Duke of GORDON, Vicar of Whap-
lode, Lincolnshire, &c.

A P P E N D I X
TO THE
T R E A T I S E
O N
A G I S T M E N T T I T H E.
In the E X C H E Q U E R.
The B I L L.

BATEMAN } *To the Right Honourable Frederick North,*
against } *Esq; commonly called Lord North,*
AISTRUP } *Chancellor and Under Treasurer of his*
and others } *Majesty's Court of Exchequer at West-*
Michael- } *minster,—The Right Honourable Sir*
mas Term } *Thomas Parker, Knight, Lord Chief Ba-*
1770. } *ron of the said Court, and the rest of*
 } *the Barons there,*

HUMBLY complaining, sheweth, unto
your Honours, Your Orator Thomas
Bateman, Clerk, Debtor and Account-
ant to his Majesty as by the Records of this
Honourable Court and otherwise it doth and
may appear,

A

That

That on the twenty-eighth Day of October, in the year one thousand seven hundred and sixty eight your Orator was duly instituted into the Vicarage and Parish Church of Whaplode in the County of Lincoln;

And on the twelfth Day of November in the same Year, Your Orator was duly inducted into the same Vicarage and Parish Church; And Your Orator shortly afterwards duly and lawfully qualified himself for the enjoyment of the said Vicarage;—And he hath ever since been and now is true and lawful Vicar of the said Vicarage and Parish Church, and as such he ever since the said twelfth Day of November, hath been and now is well intitled to all Tithes whatsoever arising, growing, increasing or renewing within the said Vicarage and Parish or the Tithable Places thereof and of which the Tithes are by any means payable to the Vicar thereof.

And Your Orator further sheweth unto your Honours, That by ancient Endowments, and other lawful ways and means, the Vicars of the said Vicarage and Parish for the Time being have for a great Number of years been intitled to the Tithes of Hay,—and to all Trusts and Revenues

Revenues, Profits and Oblations whatsoever and howsoever belonging to the said Church ;

Except only the Tithes of Corn, Wool, Lamb, Hemp and Flax, All which particulars are due and payable to the Governors of the Goods, Possessions and Revenues of the Free Grammar Schools of Robert Johnson Clerk and of the two Hospitals of Christ in Oakham and Uppingham in the County of Rutland for the Time being, as impropriate Rectors of the said Church ;

Save that the Vicars of the said Church for the Time being have been justly intitled to the Redemptions of Wool and Lamb—to wit—from the Number five and under, &c. &c. &c.

And your Orator further sheweth unto your Honours, That Samuel Aistrup,—Robert Collins—Robert Goulding,—John Speechley,—James Watson and John Watson, all of the said Parish of Whaplode now occupy and during all or the greatest part of the Time since the said twelfth Day of November in the Year of our Lord One thousand seven hundred and sixty eight have occupied great Quantities of Land

A 2

within

within the said Parish, on which they have respectively in each year during their respective Occupation thereof had great Quantities of Tithable Matters,—the Tithes whereof have been justly due and payable to your Orator as Vicar of the said Parish :

And particularly Your Orator Sheweth
That they have from Time to Time in each or most of the years in which they have occupied Lands within the said Parish as aforesaid, Kept, Fed and Depastured on such their Lands a great Number of Sheep,—which they have from time to time fattened thereon, and sent to London or elsewhere for sale or some other Purpose ;—And all or most of such Sheep having been kept on such Lands for some time after the Shearing of such Sheep,—Your Orator as Vicar of the said Parish and by Virtue of the said Endowment, hath been from Time to Time intitled to the Tithe of the Agistment of all such Sheep ; From the Time when the same were last sheared on the said Lands, until they were sold off fat or taken out of the said Parish for Sale or some other Purpose before the next Shearing Time ; Which Tithe is well worth One Penny per Month

Month for each Sheep, the same having been mostly of a very large size.

And your Orator further sheweth unto your Honours That the said Samuel Aistrup,—Robert Collins,—Robert Goulding,—John Speechley, James Watson, and John Watson, have in all or most years since the said twelfth Day of November in the said year of our Lord One Thousand seven hundred and sixty eight had within the said Parish or the Tithable Places thereof, and Kept, Fed, and Depastured many Beasts and other Unprofitable Cattle on such their Lands,

And they ought to have respectively paid to your Orator, the Tithe of the Agistment of all such Beasts and other unprofitable Cattle.

And your Orator further sheweth unto your Honours, that the said Samuel Aistrup, &c. &c. &c. from Time to Time have failed to deliver or pay to your Orator or for his Use the several Tithes aforesaid ;—Insomuch that a large sum is now due from each of them to your Orator in respect thereof.

And your Orator hath frequently by himself and his Agents in a friendly manner applied to them, and requested them and each and every of them to come to account with your Orator concerning the same and to pay unto your Orator the Money which shall appear due from them respectively to him on the Balance of such Accounts.

And your Orator well hoped that such his reasonable Request would have been complied with.

But now so it is—May it please your Honours that the said Samuel Aistrup, &c. &c. &c. combining and confederating together and to and with the Governours of the Goods and Possessions and Revenues of the Free Grammar Schools of Robert Johnson, Clerk, and of the two Hospitals of Christ in Oakham and Uppingham in the County of Rutland, who are the Impropriators of the Rectory of the said Church—And with Joseph Blackith of Frampton in the said County of Lincoln, and Hurst Fowler of Spalding in the said County, who are Lessees of the said Rectory, And divers other Persons at present unknown to your Orator—whose Names
when

when discovered your Orator prays may be herein inserted and they made Parties hereto,—with apt words to charge them—how to injure your Orator, and to defraud him not only of the money justly due and owing to him as aforesaid;—But also of the future Tithes and Payments to become due and payable from them respectively to your Orator as Vicar as aforesaid,

They the said Confederates at some time pretend that no such Tithes as aforesaid or any or either of them are or ever were due or payable to the Vicar of the said Parish;—But that the Lands occupied by them respectively are in some manner—but by what in particular they refuse to discover—exempt or discharged from any Tithes whatsoever, or any Recompence in lieu thereof.

And at other Times they pretend that all the said Tithes are due and payable to them the said Defendants the Governours of the Goods, Possessions and Revenues of the Free Grammar Schools, of Robert Johnson, Clerk;—And of the two Hospitals of Christ in Oakham and Uppingham in the County of Rutland, as Impro-

priators

priators of the said Rectory and Church; or to them the said Joseph Blackith and Hurst Fowler, Or one of them—Or some other Person or Persons as Lessees or Lessee,—Tenants or Tenant of the great Tithes of the said Parish :

Whereas your Orator charges the contrary of all such Pretences to be true—and that none of these Tithes herein before claimed by your Orator, have been at any Time delivered—paid or satisfied to or for the use of the said Governours—or to the said Joseph Blackith and Hurst Fowler or either of them, Or to any Lessees or Lessee—Tenants or Tenant under them—

Or if they have—your Orator charges that the Person or Persons so delivering,—paying or satisfying the same, have done it in their own wrong—And that your Orator is well intitled thereto.

And at other Times the said Confederates pretend that they have respectively delivered—paid or satisfied all the said Tithes to or for the use of your Orator.

Whereas

Whereas your Orator also charges the contrary of such Pretences also to be true,

But nevertheless under such or the like Pretences as aforesaid or some others equally unjust and unreasonable, The said Confederates, the Occupiers refuse to make any Satisfaction to your Orator for or in Respect of any of the said Tithes, or to come to any Account with your Orator for the same :

And the said other Defendants,—or some or one of them,—abet and support them, or some or one of them therein.

All which Actings, Doings and Pretences of the said Confederates are contrary to Equity and good Conscience and tend to the manifest wrong and injury of your Orator.

In Tender Consideration whereof and for as much as your Orator is remediless in the Premises by the Strict Rules of the Common Law; and cannot have adequate Relief therein without the aid and assistance of a Court of Equity before your Honours, where Matters of this Nature are properly cognizable and relievable :

To

To the End therefore that the said Samuel Aistrup, &c. &c. Joseph Blackith, Hurst Fowler and their Confederates when discovered upon their several and respective Corporal Oaths; And the said Governours of the Goods, Possessions and Revenues of the Free Grammar Schools of Robert Johnson, Clerk, and of the two Hospitals of Christ in Oakham and Uppingham in the County of Rutland, under their common Seal, may full—true,—direct and perfect Answer make according to the best of their respective Knowledge, Remembrance, Information and Belief to all and singular the Matters and Things aforesaid as fully and particularly as if the same were here repeated and they were thereunto distinctly interrogated;

And more especially that they may answer and set forth whether your Orator was not at or about the respective Times aforesaid or what other Times duly instituted and inducted into the said Vicarage and Parish Church of Whaplode;

And whether your Orator during all—or some or what part of the Time since such Induction hath not been—and is not now true
and

and lawful Vicar of the said Vicarage and Parish Church.

And whether by some and what ancient Endowment or other and what lawful ways and means the Vicars of the said Parish have not been for many years past lawfully intitled to to all or some and what Profits or Revenues belonging to the said Church, other than, and except as herein before are mentioned ;—And whether all or some and which of the Tithable matters herein before claimed by your Orator, are not justly due and lawfully payable to the Vicar of the said Parish for the Time being ; and whether all or any and what kinds thereof are payable to the said Governours of the Goods, Possessions and Revenues of the Free Grammar Schools of Robert Johnson, Clerk, and of the two Hospitals of Christ in Oakham and Uppingham in the County of Rutland,—or any—and what Persons Improprate Rectors of the said Rectory as aforesaid, Or in any and what other Right or their Lessees or Lessee of the great Tithes within the said Parish,—or their or his Tenants or Tenant,—And whether they the said Joseph Blackith and Hurst Fowler—or one and which of them are or is
not

not—and how long They, He, or She, have or hath been—and how and by what means Lessees or Lessee—Tenants or Tenant; And of or under whom—of all or some and what Tithes within the said Parish;—And whether they and the said Governours, or any, or either and which of them, do or doth or ever and when did claim to be and how and in what manner intitled to all or any and which of the Tithes herein before claimed by your Orator.

And That All the said Defendants, may set forth whether they the said Samuel Aistrup, &c. &c.—or some—or one—or which of them have or hath respectively during the whole—or some—and what part of the Time since the twelfth Day of November in the year of our Lord One thousand seven hundred and sixty eight, occupied some and what particular Lands within the said Parish of Whaplode and the Tithable Places thereof—And may set forth all the Particulars of such Lands,—and the Quantities—Qualities—Names and other Descriptions thereof—And of whom and under what Rents they respectively hold or did hold the same—And whether they the said Confederates, the Occupiers or some—or one and which of them

them have or hath not in all or some and what years since the said twelfth Day of November in the year of our Lord One thousand seven hundred and sixty eight, Kept, Fed and Depastured some and what Number of Sheep on the Lands occupied by them respectively within the said Parish or the Tithable Places thereof;—And on what Days they have respectively sheared their Sheep on such Lands in each year since such Time; And whether in each or any or either and which of the Years since such Time, they, or some, or one and which of them have or hath not kept all, or some and what Number of the sheep so sheared by them on such Lands—or some and what Parts thereof for the Purpose of fattening them for Sale or for what other Purpose :

And Whether such Sheep were not afterwards taken off from such Lands before the next Shearing Time;—And that they may respectively set forth the particular Number of Sheep which in each Year were Fed, Kept and Depastured on their respective Lands in the said Parish or Tithable Places thereof, only part of the year after Shearing Time and then taken off therefrom for Sale or any other Purpose ;

pose;—And how long Time they continued on such Lands in such years after the Shearing;—And how much Money per Month the Agistment or Feeding of each Sheep was worth during such Times; and the Value of the Tithes thereof.

And that they may also set forth how many Beasts or other Unprofitable Cattle they have respectively Had, Agisted or Fed and how long in each year since the Time aforesaid on the Lands occupied by them respectively within the said Parish or the Tithable Places thereof—And how much money per Month the Agistment or Feeding of each Beast or other unprofitable Cattle was worth during such Time—and the Value of the Tithe thereof.

And that all the said Confederates may set forth, whether all or any and which of the Lands within the said Parish or the Tithable Places thereof belonging to or occupied as aforesaid by them or any or either and which of them, are by any and what means exempt or discharged from the Payment of Tithes or from making any Satisfaction for Tithes of or for all or any and either and which of such Tithable Matters

Matters or Things—And how and when the same became so.

And whether they the said Confederates or any or either and which of them have or hath and when and how made Satisfaction and to whom and for whose use, for the Tithes of all or any and which of the Tithable Matters and Things aforefaid arising on their said Lands or any and what part thereof in all or any and which of the years aforefaid and for what uses and by what Right—and if not—why not.

And whether your Orator—or some and what Person or Persons on his Behalf hath or have not—and how often and when and in what manner applied to them—or some or one and which of them for such or the like Purposes as aforefaid or some, or one and which of them.

And whether they or some or one and which of them have or hath not and when and how often and in what manner and for what reason refused or declined to comply with all or some or one and which of such Requests.

And

And that the said Confederates may respectively come to a fair and just account with your Orator for what shall appear due to him from them and each of them on the Balance of such Accounts :

Your Orator hereby waving all Penalties incurred by Subtraction of such Tithes and being contented to accept the single Value thereof.

And that your Orator may have such further and other relief in the Premises as to your Honours shall seem meet.

May it please, &c. &c. &c.

E N D of the B I L L.

NOTES, &c. &c. on the BILL.

THE preceding Bill is perhaps one of the shortest, and considering its Novelty, one of the simplest that ever was filed upon the subject of Tithes in the Court of Exchequer. The sole objects of it are

1st. The Tithe of the Agistment of All Sheep,—from the Time they were last shorn—till they were slaughtered, fold, or removed out of the Parish.

2dly. The Tithe of the Agistment of all Barren and Unprofitable Cattle.

3dly. All the above-mentioned Tithes—arising on certain Lands in the Parish which had never before paid any Tithes at all;—but which had always been held Tithe Free, under the Plea of their having formerly belonged to one of the greater Abbies dissolved by the Stat. of the 31st Hen. 8th.

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To these three Objects the Bill,—after much consideration, was solely confined, for the following Reasons.

Tho' there were in this, as in most other Parishes, several pretended Moduses—of the illegality of most of which notwithstanding the Plaintiff was perfectly in his own mind convinced—yet as the illegality of them must at last not have been determined by the Court of Exchequer—but each of such pretended Moduses must have been sent to an issue at Common Law, and the Abolition or Confirmation of them, have depended upon the Verdict of a Jury—all which Proceedings would not only have very greatly enhanced the Expence, but likewise greatly protracted the Time of the winding up—of the Suit, he declined making them any part of his present Bill. By which he foresaw, he should not only keep clear of all such Issues, but leave himself at liberty,—after having gained a Decree in a little Time in the Court of Exchequer as to the respective Objects of it,—to file an entire new one, solely to try the Legality of such Moduses as he might then chuse to litigate, according to his past and the Prospect which
might

might thence be opened to him of his, future Success.

The Event fully justified the Propriety of such Procedure. In about three Years from the filing his Bill and at an easy Expence the Plaintiff gained a full Decree in his Favour for all the Objects of it—the entire new Acquisition of which was of much more importance to him, than the total Abolition of all the pretended Moduses in the Parish put together, and at the same Time left them all entirely in *statu quo*—to be litigated or not, in a subsequent Bill as he thought proper.

By Ancient Endowments or other Lawful Ways and Means.—An extended Copy of the Original Endowment at full length is printed after the Decree in this Appendix for the Gratification of such Readers as might be desirous of seeing such an Instrument.

It is of the first of those Forms mentioned in the second Edition, Chap. 15th of the Treatise. How far the Plaintiff rested his Right upon it to the Tithes claimed in his Bill, and what Authority it was allowed to have by the

Court in support of such Claims, will be explained hereafter on the Word *Endowment* in the Decree.

The Vicars of the said Vicarage, &c. have for a great Number of years been intitled to the Tithe of Hay—And to the Redemptions of Wool and Lamb, &c.

The Redemptions or what in the Parish is called the Odds of Wool and Lamb,—and which are accountable to the Vicar,—are thus described in the Endowment——“ From the Number “ Five and under,—to wit,—Wheresoever the “ Tenth or Tithe Lamb or Fleece of Wool, “ according to the usual Mode of taking such “ Tithe in the said Parish, is not due—the “ Tithe of such Redemptions or Odds of Wool “ and Lamb, shall be paid to the Vicar.”

Thus a Parishioner having only five or less Lambs or Fleeces of Wool is to account for them all to the Vicar—if Fifteen—One Lamb or Fleece to the now Impropriators or their Lessees, and for the Redemptions or Odd five of each,—to account to the Vicar. The same with respect to 25—65—105 or any other
Number

Number more or less than where the exact Tenth or Tithe in kind is due.

The Intention of the Endowment as understood and explained by the Parishioners Time immemorial, being—That the Persons receiving the Tithe of Wool and Lamb, should be intitled to such Tithes only so far as according to the usual Mode of Tithing, a full Tenth or Tithe Lamb or Fleece was due—And that a valuable Consideration for the Tithe of the Odds or Remainder when and wherever there were any—expressed by the word *Redemptiones*, should be paid to the Vicar.

And these two Tithes, viz. of Hay and the Redemptions of Wool and Lamb are the only Tithes expressly and by name given by this Endowment to the Vicar—all the other Tithes to which he is intitled being conveyed to him by the general words,—*Alteragium Dictæ Ecclesiæ, et totum Emolumentum ab eodem Alteragio, Qualiterumque proveniens—quocumque Nomine censeatur et in quibuscumque consistat vel consistere poterit, absolute incussæ; viz. Decimis Garbarum, Lini, Canopi, Lanæ et Agnorum,—duntaxat exceptis.*

And how and when the same became so.—The Lands for which a total Exemption from the Payment of Tithes was set up, are particularly set forth by the Defendant Aistrup in the Answer for the Occupiers, which see.

T H E

T H E
A N S W E R
O F T H E
D E F E N D A N T S,
The O C C U P I E R S.

*The Joint and several Answers of Samuel Aistrup,
Robert Collins, Robert Goulding, John Speechley,
John Watson and James Watson, Six of the De-
fendants to the Bill of Complaint of Thomas Bate-
man Clerk Complainant.*

THESE Defendants saving and reserving to themselves now and at all Times hereafter all and all manner of Benefit and Advantage of Exception that can or may be had or taken to the Manifold Errors, Uncertainties and Imperfections in the Complainant's said Bill of Complaint contained.

For Answer thereunto or to so much thereof as these Defendants are advised is material or necessary for them or either of them to make Answer unto; Each speaking for himself only and not the one for the other of them severally answer and say:

And

And first of all these Defendants admit, That on or about the Times in the said Complainant's Bill mentioned the said Complainant was duly instituted and inducted into the Vicarage and Parish Church of Quapeladd alias Whapeladd, otherwise Whaplode in the said Complainant's Bill mentioned, And might for what these Defendants know to the contrary shortly afterwards qualify himself for the Enjoyment of the said Vicarage, and from the same Time hath been and now is the true and lawful Vicar of the said Vicarage and Parish Church; And as such is intitled to several Species of Tithes arising, growing and renewing within the Limits of the said Vicarage and the Tithable Places thereof;

But whether by ancient Endowment or what other ways and means the Vicars of the said Vicarage are so intitled these Defendants or either of them cannot set forth being entirely Strangers thereto.

Therefore these Defendants crave leave to refer the said Complainant to such Endowment

ment——if any such there is——when produced to such proof as he shall make thereof.

And these Defendants further answering say ;
That they have heard and believe that during the Time whereof the Memory of Man is not to the Contrary there have been yearly and accustomedly such Tithes yielded and paid to the Vicars of the said Vicarage and Parish Church for the Time Being as herein after mentioned, That is to say

Tithe of Hay in Kind or One Shilling per Acre as a Composition in Lieu of the Tithe thereof.

Rape Seed

Cole Seed

Mustard Seed and

Turnip Seed the tenth of the said seed upon the Land—or Shilling Penny—that is to say—a Penny for every Shilling for which the said Seed is sold, upon request after it is sold at the Choice of the Vicar of the said Vicarage for the Time Being, making his choice at the time of the thrashing of the said Seeds respectively

And

And these Defendants further answering say,
That the Tithes of

Corn

Wool

Lamb

Hemp and

Flax

Yearly, growing and increasing within the said Parish of Whaplode are, as these Defendants verily believe, wholly due and payable to the Governours of the Goods, Possessions and Revenues of the Free Grammar Schools of Robert Johnson Clerk and of the two Hospitals of Christ in Oakham and Uppingham in the County of Rutland for the Time Being, as Improprate Rectors of the said Church or to their Lessee or Lessees—And that the Defendants Joseph Blackith and Hurst Fowler are the present Lessees.

And these Defendants have been informed and believe

Save that the Vicars of the said Vicarage for the Time Being are as these Defendants apprehend and believe intitl'd to

One halfpenny and no more for every Fleece of Wool and for every Lamb under the Number

ber five—commonly called odds of Wool and Lamb—and not the Tithe in kind thereof.

All above that Number wholly belonging and appertaining to the Improprate Rectors of the said Parish of Whaplode as aforesaid.

And these Defendants further answering say, They have heard and believe that within the said Parish there have been time out of mind and whereof the memory of man is not to the contrary the several

Moduses or Ancient Payments in Lieu of Tithes paid and accepted by the Vicar for the Time Being of the several Species of Tithes following, that is to say,

For Every Cade Lamb One Halfpenny and no more ;

For the Milch of every Milch Cow the yearly sum of Five Pence and not the Tenth in kind ;

For Every Calf under seven Calves, One halfpenny and no more And in case the Parishioners

shioners and ground occupiers have seven Calves in one year, Then Twenty Pence in lieu of the Tithe of the said seven Calves; and not in kind:

And for every Calf above the Number of seven One Halfpenny Each,

For Every Foal bred in the Parish under the Number seven One Halfpenny and no more; And in case any Parishioner and ground Occupier hath seven Foals in one year then Five Shillings in Lieu of the Tithe of the said seven Foals and not in kind. And for every Foal above the Number of seven One penny each.

For every Barren Beast above One Year old that hath been kept in the Parish above one Month and then sold or removed out of the said Parish, the Yearly sum of four pence in Lieu of the Agistment Tithe thereof and not the tenth part of the Profit.

Of Young Pigs, the tenth when they are three weeks old.

Of Geese the Tenth when they are Green or at Lammas at the Choice of the Vicar there.

Of Young Turkies the Tenth.

For

For every Horse or Beast a Stranger agifted in the Parish if but One Month the yearly sum of Four Pence is paid to the Vicar by the Person taking the same to agift.

For a Garden and an Orchard together, the yearly sum of eight Pence and not the Tithe in kind.

For Every Communicant above the age of fourteen Years the sum of Two Pence.

For every Dwelling House and Fire Hearth, Yard or Privy Tithes, Otherwise called Shot and Wax Two Pence Half Penny.

Of Reed in Kind, or Shilling Penny—that is to say—a Penny for every Shilling, for which it is sold upon request, after it is sold at the Choice of the Vicar of the said Parish for the Time Being.

Of Tithe Underwood Two Shillings in the Pound—that is to say—Two Shillings out of every Twenty Shillings for which such Underwood is sold.

For

For Every Stock of Bees taken Four Pence
and not in kind.

For Every Stock of Bees standing all Winter
and not taken Two Pence and not in kind.

And Mortuaries as by the Statute is appointed.
And that all such Payments in Lieu of Tithe
for

Cole Seed

Mustard Seed

Turnip Seed

Odds of Wool and Lamb

Cade Lambs

Milk

Calves

Foals

Agistment of Barren Beasts

Garden

Orchard

Oblations of Communicants and

Dwelling Houses

Reed

Underwood and

Bees—to be paid yearly or at Easter or after
on demand thereof.

And

And these Defendants further answering say That during all the Time in the said Complainant's Bill mentioned they have respectively occupied within the said Parish of Whaplode and the Tithable Places thereof, Divers Quantities of Arable, Meadow and Pasture Land,

And First, this Defendant Robert Goulding for himself saith That he held and occupied in the said Parish of Whaplode and the Tithable Places thereof in the Years—1768—1769—and 1770—341 Acres of Arable, Meadow and Pasture Land.

And the Defendant Samuel Aistrup for himself saith That in the Year 1768 he held and occupied within the Parish of Whaplode aforesaid and the Tithable Places thereof 141 Acres of Arable Meadow and Pasture Land.

In the year 1769—149 Acres of Arable, Meadow and Pasture Land—

And in the Year 1770—156 Acres of Arable Meadow and Pasture Land,—

Exclusive

Exclusive of 91 Acres and One Rood of Meadow and Pasture Land in eight Pieces called Park Coats, which are Tithe Free—And which this Defendant occupied in the Parish of Whaplode aforesaid in the said Years 1768—1769—and 1770.

And this Defendant Robert Collins for himself saith That he held and occupied in the years 1768—1769 and 1770 within the Parish of Whaplode aforesaid and the Tithable Places thereof 141 Acres of Arable, Meadow and Pasture Land.

And this Defendant John Speechley for himself saith That in the year 1768 he held and occupied within the Parish of Whaplode aforesaid and the Tithable Places thereof 121 Acres, of Arable, Meadow and Pasture Land.

In the year 1769—114 Acres of Arable, Meadow and Pasture Land.

And in the year 1770—107 Acres of Arable, Meadow and Pasture Land.

And

And this Defendant John Watson for himself faith

That in the years 1768 and 1769 he held and occupied within the Parish of Whaplode aforesaid and the Tithable Places thereof 190 Acres of Arable, Meadow and Pasture Land.

And in the year 1770—215 Acres of Arable, Meadow, and Pasture Land.

And this Defendant James Watson for himself faith

That in the years 1768—1769 and 1770 he held and occupied within the Parish of Whaplode aforesaid and the Tithable Places thereof 107 Acres and two Roods of Arable, Meadow, and Pasture Land.

And these Defendants further answering say, That they have in a Schedule to this their Answer annexed intituled the first Schedule—and which they pray may be accepted and taken as part thereof,—respectively set forth according to the best of their respective Knowledge, Recollection and Belief an Account of such Sheep as were from time to time fattened by them upon the Lands which they respectively occu-

C

pied

pied in each year within the Parish of Whap-
lode aforesaid and the Tithable Places thereof:
And the respective Times such Sheep were sold
or removed by them and each of them out of
the said Parish from the Time of the said Com-
plainant's first Induction into the said Vicarage
until the Filing of this Bill in this Honourable
Court.

And these Defendants further answering say,
They have heard and believe that the Impro-
prietate Rectors of the said Parish or their Les-
sees, have from time whereof the Memory of
Man is not to the contrary been intituled to re-
ceive and have received from the Parishioners
and Inhabitants of the said Parish and do now
receive of and from these Defendants and all
other the Parishioners and Inhabitants of the
said Parish the following yearly Tithes, that is
to say,

Tithe of Corn

Wool

Lamb

Hemp and

Flax in kind

And an Agistment Tithe for all Sheep sold out
of the said Parish betwixt Candlemas and Shear-
ing

ing Day and which have been agisted upon any Lands in the said Parish——Except the Lands which are Tithe Free—the sum of Three Pence per Head—

And also a Rate or Composition Tithe of One Fleece in the Hundred—counting six score to the hundred—for every month—for all sheep, which are brought into the said Parish after the second Day of February and shorn therein—On which Day an Account of all Sheep in the said Parish is usually taken by the Improprate Rectors of the said Parish or their Lessees—

And these Defendants further answering say, They admit it to be true that during the Time in the said Complainant's Bill mentioned, they have severally fed and depastured on the Lands occupied by them respectively within the Tithable Places of Whaplode aforesaid several Sheep which were shorn in the said Parish and afterwards depastured on such Lands and then sold off fat or otherwise disposed of by them respectively: An Account of which Sheep these Defendants have severally set forth in a Schedule—intituled the first Schedule to this their Answer

annexed, and which they respectively pray may be accepted and taken as part thereof.

And these Defendants severally say—

They deny it to be true that any Agistment Tithe is in any respect due from them—any—or either of them to the said Complainant for any Sheep so sold or removed out of the said Parish after the Shearing Day—

For these Defendants respectively say

That All the sheep they from Time to Time so fed—sold off—or removed out of the said Parish as aforesaid were so often as sold or removed—replaced by Fresh Ones, which were purchased in by these Defendants respectively and depastured on the same Lands in their stead;—And such Sheep continued therein in Course until the next shearing Day, when they paid a full Tithe in kind to the Impropiators or their Lessee or Lessees the succeeding Year.

And these Defendants further answering say—

That they have heard and believe, That whenever any Sheep have been shorn or clipped in the said Parish and depastured on their said Lands at any Time after such shearing and afterwards

terwards sold off or removed out of the said Parish before the next Candlemas or Counting Day,

That no Agistment Tithe was ever paid or ever demanded of the Parishioners or Occupiers of such Lands in respect thereof, Either by the Impropriators or their Lessee or Lessees, Or Vicar of the said Parish, to their or any of their respective Knowledge or Belief—Save by the Complainant's Bill—But such Tithe Wool in kind was always deemed, taken and understood, as an Allowance, Compensation and Satisfaction to such Occupier, as having paid a full year's Tithe of Wool in kind to the Impropriators,

Altho' in Fact such Sheep had not been depastured more than half a year in the said Parish—which was and is frequently the Case.

And this Defendant Samuel Aistrup for himself further answering saith—

That himself and late Father John Aistrup deceased were Tenants or Lessees respectively of the Improprate Tithes of Whaplode afore-

saïd for forty successive Years before the present Lessees Joseph Blackith and Hurst Fowler—And that during the whole Time he this Defendant and his saïd Father occupied such Improprate Tithes it was always understood by them respectively that in consideration of the Parishioners of the saïd Parish paying a full Tithe of their Wool for all sheep which were brought into the saïd Parish after clipping Day and before Candlemas or Counting Day; and were afterwards clipped or shorn in the saïd Parish, that this Defendant or his saïd Father were not intitled to receive any Agistment Tithe for the saïd Sheep, nor did they or either of them ever receive or even make a demand of any such Tithe provided such Sheep were sold off or removed out of the saïd Parish before the then next Candlemas Day; by reason those very Sheep which were shorn in the saïd Parish paid their whole Year's Tithe to the Impropriators, notwithstanding they were not kept half the year therein.

And these Defendants further answering say, They admit it to be true, that they have respectively had and kept upon the Lands occupied by each of them in the saïd Parish of
Whaplode

Whaplode and the Tithable Places thereof during the Time in the Complainant's Bill mentioned Divers Barren Beasts which were fattened on the said Lands and then sent to London or some other Place for Sale.

That there has for Time immemorial been constantly paid to the Vicars of the said Parish for the Time Being, a Modus of Four Pence for every Beast sold or removed out of the said Parish in lieu of and as a Compensation for the Agistment Tithe of such Beasts ; provided such Beast so sold or removed out of the said Parish was above one year old and had been agisted therein above one Month, but not otherwise.

And these Defendants further say that they have in the second Schedule to this their Answer annexed and which they pray may also be accepted and taken as part thereof, respectively set forth the exact Number of Barren Beasts which were fattened upon the several Lands occupied by them respectively within the Tithable Places of Whaplode aforesaid during all the Time in the said Complainant's Bill mentioned : But at what particular Time such Beasts were severally sold or removed out of the said Parish these
Defendants

Defendants or either of them cannot set forth not having kept any account thereof.

And these Defendants further answering say, That they deny it to be true that they or either of them ever refused to come to an account or pay to the Complainant or any other Person for his Use All or any Part of the Tithes, Oblations and Obventions justly due and owing to him in Right of his said Vicarage.

But on the contrary these Defendants each speaking for himself saith, That they have each of them heard and believe and doubt not but to prove that before the issuing out of the Original Process on this Cause and filing of the Complainant's Bill in this Honourable Court they did respectively offer to pay and did accordingly procure to be tendered to the said Complainant all such Tithes and other Ecclesiastical Rights and Emoluments which were any way due or owing to him from these Defendants or any or either of them from the Time of his first Induction into the said Vicarage until the filing of this Bill in this Honourable Court: All which respective sums of money so due and owing to the Complainant from these Defendants and each of them and which were so
tendered

tendered to the said Complainant these Defendants have severally set forth in the Third Schedule to their Answer annexed and which they pray may likewise be accepted and taken as part thereof.

And these Defendants further answering say, That at the Time such Tenders were so made to the said Complainant as aforesaid they have respectively been informed and believe that the sum of Six Pence halfpenny was offered to the said Complainant for each of their Dwelling Houses and Fire Hearths—commonly called Shot and Wax for the year 1770. But these Defendants have since the Time such Tenders were so made to the said Complainant as aforesaid been informed and do now severally believe and doubt not but to prove that the said Complainant is entitled to no more than the sum of Two Pence halfpenny, for each Dwelling House and Fire Hearth—commonly called Shot and Wax—for the said year 1770 instead of the sum of Six Pence halfpenny so offered to be paid him by these Defendants respectively as aforesaid for the same: Therefore these Defendants do now offer to pay to the said Complainant the sum of Two Pence Halfpenny each and not more, for their respective Dwelling

ing

ing Houses and Fire Hearths—commonly called Shot and Wax instead of the sum of Six Pence Halfpenny heretofore tendered to the said Complainant by each of these Defendants for the same.

And this Defendant Samuel Aistrup for himself further answering saith, That he rents and occupies in the Parish of Whaplode aforesaid Ninety One Acres and One Rood by Computation of Arable, Meadow and Pasture Land in Eight Pieces or Parcels called Park Coats, abutting on the Lands some Time since of the Right Honourable the Earl of Buckinghamshire on the East, Sparrow Hawkes Lane on the West and North, and on Hundle Tree Banks on the South; And which Lands as this Defendant hath been informed and believes have been time Immemorial held and discharged of and from the Payment of Tithes as being formerly appendant and belonging to the Abbey or Monastery of Croyland in the County of Lincoln at the Dissolution thereof, and held by such Abbey freed and discharged from the Payment of Tithes; and that by Virtue of the Statute of the 31st of Hen. 8th the said Abbey being one of the greater Abbeys—no Tithes are payable
for

for or in respect of the said Lands or any of them to any person or persons whomsoever : But the same and every part thereof are by Virtue of such Statute or other lawful ways and means discharged and acquitted from Payment of Tithes : Nor has this Defendant nor the Person or Persons occupying such Lands to this Defendant's Knowledge or Belief ever paid any Tithes in respect thereof since the Dissolution of the said Abbey or Monastery or within the memory of man to the Impropriators Rectors or Vicars of the said Parish for the Time Being or to any other Person or Persons whomsoever : For which Reason the Defendant hath not set forth an Account of such his Sheep and other Cattle which were fed and depastured on the said Tithe free Lands as he humbly apprehends the same to be exempt and discharged from the Payment of Tithes.

And these Defendants severally deny all and all manner of unlawful Combination and Confederacy wherewith they or either of them are charged ; without that—that there is any other Matter, Cause, or Thing in the Complainant's said Bill of Complaint contained material or effectual in the Law for these Defendants
or

or any or either of them to make answer unto;
and not herein and hereby Well and suffici-
ently answered, avoided, traversed or denied is
true to the Knowledge and Belief of these De-
fendants.

All which matters and things these Defend-
ants are ready and willing to aver maintain and
prove as this Honourable Court shall direct,
&c. &c.

NOTES,

N O T E S, &c.
ON THE
A N S W E R
OF THE
D E F E N D A N T S,
The O C C U P I E R S.

MODUSES or ANCIENT PAYMENTS.
None either of these Ancient Payments or pretended Moduses were made any part of the Plaintiff's Bill—and as none of them are at all mentioned in it, it was unnecessary to have mentioned any of them in the Defendant's Answer. The Decree could extend to no other Objects, than those prayed for in the Bill—and as that was only

1st. For the Tithe of the Agistment of Sheep, &c.

2dly. of Barren and unprofitable Cattle;

3dly. of certain Lands heretofore held as Tithe Free;

however it might have been decreed with regard to these particulars; all other Tithes
and

and tithable Matters or pretended Moduses and ancient Payments pleaded for or in lieu of them, must be of Course, as we find they were, left in *statu quo*,—neither confirmed nor abolished,—and the legality therefore of all or any of them, open to be litigated in a subsequent Bill as the several Parties might chuse. It was altogether superfluous and to no manner of purpose to have them mentioned in the Defendant's present Answer, unless it was done with this Prospect, Viz.—That should the Court not decree any of the Tithes claimed by the Plaintiff in his Bill and it should appear likewise that the Defendants had made full Tenders for all other Tithes due to him,—the Plaintiff would be ordered to pay all his own at least, if not also the Defendant's Costs.

And an Agistment Tithe for all Sheep sold out of the said Parish betwixt Candlemas and Shearing Day—the sum of Threepence per head.] It is said in the Preface to the Treatise on Agistment Tithe, that no Tithe for the Agistment of Sheep or of barren and unprofitable Cattle had ever been either paid or demanded in the Parish previous to the filing of the Plaintiff's

Plaintiff's Bill. It becomes requisite here therefore to explain on what Account the Threepence per head for all Sheep sold or removed out of the Parish betwixt Candlemas and Shearing Time here stated, had been heretofore paid.

These Defendants have set forth in the next Sentence of their Answer That there is paid to the Lessees of the Impropiators, a Rate or Composition Tithe, of one Fleece in the hundred—counting six score to the hundred—for every Month, for all Sheep which are brought into the said Parish after the second Day of February, and shorn therein, or betwixt Candlemas and Shearing Day: And all sheep sold or removed out of the said Parish within that Time and shorn in another, pay, in such other Parish, a like Rate Tithe for their Wool; and therefore was there no demand upon such Sheep in the Parish from whence they are so removed; instead of paying a full tithe of their Wool, they would only pay the above Rate or Composition Tithe, of one Fleece in the hundred per Month.—This Threepence per head therefore demanded for all Sheep sold or removed out of the Parish, betwixt Candlemas and
Shearing

Shearing Time; was—according to the old—but now obsolete, Law, in lieu of a Rate Tithe for Wool, becoming due during the Time such Sheep were kept in the Parish from whence they were so sold or removed unshorn. And in this Parish this threepence per head demanded for such, was not heretofore for the Tithe of their Agistment, but for the Rate Tithe of Wool as above explained; and was demanded for what were called Spring Sheep, removed out of the Parish before they were clipped. The word Agistment, with respect to these Sheep, was never heard of till the present Bill was filed; But as soon as it was filed, both the Name and the Nature of the Right to the threepence per head for these Sheep were intirely changed and it was now said to be due and therefore substituted in lieu of the Tithe of their Agistment.

It hath been said above, according to the old—but now obsolete Law of a Rate Tithe of Wool,—That such Law is now obsolete, it might perhaps be sufficient here to observe, That it is now clearly held and has frequently been determined in the Court of Exchequer, That Sheep shall pay a full Tithe of their
Wool

Wool in the Parish where they are shorn and Tithe of their Agistment in every other Parish in which they have been kept since their last Shearing, according to the Value of their keeping and the Time they have been so kept.

But lest this should seem to any of his Readers too bold an assertion to be implicitly admitted merely upon his own Authority ; the Author here begs Leave to produce, That of the present Lord Chief Baron of the Court of Exchequer, from his Opinion,—when Mr. Skynner—on this Subject in the Case of —

— — — — —
and which has been kindly communicated for the purpose by the Favour of a Friend.

Extract from Mr. ——— now Lord Chief Baron,——Skynner's Opinion, &c.

“ It was the Rule in the Canon Law, established by the Constitution of Archbishop Winchelsea and observed in the Temporal Courts,”

“ That if Sheep were agisted in one Parish and afterwards shorn in another, a Rate

D

“ Tithe

“ Tithe should be paid for the Wool to the
“ Rector or Vicar of each Parish,—in Pro-
“ portion to the Time that the Sheep had been
“ fed in each.

“ This was found to be very inconvenient
“ and detrimental to the Church—for Sheep
“ were often agisted in one or more Parishes
“ and afterwards shorn in a distant Parish, by
“ which Means the Rectors or Vicars of these
“ Parishes where the Sheep had been agisted,
“ lost their part of the Tithe.”

“ To remedy this Inconvenience, the Tem-
“ poral Courts introduced a new Rule, which
“ was, That the whole Tithe of the Wool
“ should be paid to the Rector or Vicar of the
“ Parish in which the Sheep were shorn, And
“ That the Rector or Vicar of the Parish in
“ which they had been agisted, should have
“ Tithe for the Agistment.”

“ This was greatly for the Benefit of the
“ Church, as it not only secured the Payment,
“ but gave an additional Tithe. But at the
“ same Time it changed the Nature or Species
“ of the Tithe, which was paid in those Pa-
“ rishes

“ rishes where the Sheep were agisted. For
“ whereas before the Rector or Vicar of those
“ Parishes received a Proportion of the Tithe
“ of Wool, they from that Time ceased to
“ have any part of the Tithe of Wool, but
“ received instead thereof the Tithe of Agist-
“ ment.

“ This is the Rule of Law as I conceive it
“ now stands; and the Reason of it being
“ thus explained, it follows of Course,”

“ That the Whole Tithe of Wool——what-
“ ever Practice may be to the contrary—is by
“ Law payable where the Sheep are shorn.
“ And it follows too, That the whole of the
“ Tithe of Wool being payable in the Parish
“ where the Sheep are shorn, such are not
“ *Animalia Fruētiosa* in the Parish where they
“ have been only agisted, and therefore ought
“ to pay an Agistment Tithe, &c. &c.”

*For these Defendants respectively say, That all the
Sheep they from Time to Time so fed, sold off, or re-
moved out of the said Parish as aforesaid, were so
often as sold or removed replaced by fresh Ones,—
which were purchased in by these Defendants re-*

respectively and depastured on the same Lands in their stead; and such Sheep continued therein in Course until the next Shearing Day, when they paid a full Tithe in kind to the Impropiators or their Lessee or Lessees the succeeding Year.

Such was the Plea alledged by the Defendants against paying any Tithe for the Agistment of Sheep as stated in the Bill. Which Plea was not allowed for the following Reasons.

1. In order to have made the most of this Plea, it was argued, That it ought to have been stated in their Answer and proved, That All the Sheep which they from Time to Time so fed—sold off—or removed out of the Parish, were *as soon as* so fed, sold off, &c. replaced by *an equal Number of others*, which were continued therein in Course until the next Shearing Day, when they paid a full Tithe of Wool in kind.

But this was neither stated in their Answer—nor proved—nor attempted to be proved. For the Graziers in that Country, begin to sell off their Sheep from the Time they are shorn in the beginning of July, as they become fat,
till

till after Christmas; But they buy few or no fresh ones in again in their stead, at the soonest till the May following; and that for this obvious reason, viz. That their Lands will not support, much less fatten, more than half so many Sheep in the Winter, as in the Summer Months.

And such few Sheep as are brought into the Parish after Candlemas and there kept till their next Shearing and then shorn, instead of paying a full Tithe of their Wool in kind to the Impropriators pay no more than at the Rate of One Fleece in the hundred,—counting Six score to the hundred, per Month, for the Time they have been kept in the Parish preceding their Shearing—as they have themselves stated in their Answer, Page 35.

2dly. But supposing the Defendants granted more from this Plea than they themselves urged in their Answer, viz. That all the Sheep which they from Time to Time so fed—sold off, or removed out of the Parish, were so often as so fed, &c. not only replaced by fresh ones—But that as soon as they were so sold, &c. &c. they were likewise replaced by *an equal Num-*

ber of others, which continued therein till shorn, &c.

Even this Plea, with such Addition and Amendment—it was argued ought not—and it will be found did not avail them for an Exemption of such Sheep from the Payment of the Tithe of their Agistment from the Time of their last Shearing—For this Reason—That if admitted, It would be making some Sheep pay Tithe for others—viz. That certain Sheep paying Tithe of Wool in kind this Year, shall exempt all those sold out of the Parish the Last from paying Tithe of their Agistment—In other words—That some Sheep paying one Species of Tithe in kind due This year, shall exempt other Sheep from paying a different Species of Tithe due the Last year.

That there has for Time immemorial been constantly paid to the Vicars of the said Parish for the Time being a Modus of Four Pence for every Beast sold or removed out of the said Parish in Lieu of and as a Compensation for the Agistment Tithe of such Beasts, &c. but not otherwise.

The Payment of Four Pence to the Vicar for every Beast sold or removed out of the Parish,
was

was not controverted by the Plaintiff. But before the filing of his Bill it was never understood that such Four Pence was paid in lieu of the Tithe of the Agistment of such Beasts. The Defendants themselves do not say it was paid for every Barren Beast—but only for every Beast sold or removed out of the Parish—thus comprehending even *profitable as well as unprofitable*—and it had, in fact, always before been paid for the former as well as the latter—for all Milch Cows sold betwixt one Easter and the next, as well as for each barren Beast: And as Milch Cows are not liable to the Payment of Tithe for their Agistment; and it could not therefore in their Case be paid on that Account, it could not be supposed to be so paid in the other.

But it is not alledged that even for Barren Beasts from the Time of their being weaned or from their being one Year old, till they were so sold or removed, any thing was ever paid to the Vicar on Account of such Beasts, though they had been kept several whole years all the Time in the Parish; such feeding Beasts being seldom sold till they are five or six years old. With respect therefore to such Beasts whether bred or brought into the Parish, the Plea was this. One
Halfpenny

Halfpenny and no more was due to the Vicar for each such Calf when dropped, payable the Easter after; which Halfpenny exempted them from the Payment of any thing more on any Account whatever till the Easter after they were sold—when Four Pence was acknowledged to be due—the year with regard to such Beasts being reckoned from Easter to Easter. So that no more than One Halfpenny for the First and Four Pence for the Last Year—a small Part only of which several of them had perhaps been kept in the Parish,—was all that had been ever paid for each of such Beasts. But that for the Second, Third, Fourth and Fifth Years, during each of which they had been kept all the Time in the Parish, Nothing at all was due to the Vicar;—That is, in the year in which they are sold,—though they had been kept perhaps only five Weeks in the Parish, they were to pay Four pence each to the Vicar, but for every preceding year, though kept the whole Time on it, Nothing.

For the Agistment Tithe of such Beasts during such intermediate years and likewise for the Tithe of the Agistment of all young Horses and Mares from their being one year old, till used
in

in the Plough, or broke and used in Husbandry, concerning which nothing is said in the Defendants Answer,—of which not the least mention is made—nor for which any thing was ever pretended to be paid or even demanded, this Bill was principally filed, and which, with that of the Beasts during the intermediate years above mentioned, under the general denomination of barren and unprofitable Cattle, make the chief objects of it.

Therefore these Defendants do now offer to pay to the said Complainant the sum of Two pence halfpenny each and not more for their respective Dwelling Houses and Fire-Hearths, commonly called Shot and Wax, instead of the sum of Six pence halfpenny, &c.

As much Notice is here taken of this trifling Article as if it had been of equal importance with the objects of the Bill. But though such Modus or ancient Payment is not at all mentioned in the Bill nor is any object of it, nor therefore intitled to any Notice here, yet as the expression occurs in several old Terriers, in order to gratify the curiosity of those who may be ignorant, but desirous of being informed, of its
Origin

Origin, the following account may not be unacceptable.

The Hearth Penny, or annual Payment for each Fire-hearth is, it may be presumed, as general, as that for communicants and was payable in every Parish in the Kingdom, and was more or less, as to the particular sum, in each according to its first Institution or ancient Custom. But what is here called Shot and Wax—which should be expressed *Shot for Wax*—though confounded and stated to be one and the same Due and Payment with the Hearth-penny is a distinct and separate Offering or Oblation; and due on another and a very different Account, viz. the following. In the Time of Popery in this Kingdom Candlemas Day was one of the highest Festivals in the whole year, on which each Parochial Church was grandly illuminated with Wax Candles; for the purchase of which each Family contributed its Quota or *Shot*; and hence the Money paid to the Parish Priest by each Family,—from whence this Payment derived its origin and which in several Parishes yet subsists,—*was called Shot for Wax.*

The

The Joint and several Answer of the Governours of the Goods, Possessions and Revenues of the Free Grammar School of Robert Johnson, Clerk;—and of the Hospitals of Christ in Oakham and Uppingham in the County of Rutland; And of Joseph Blackith and Hurst Fowler, to the Bill of Complaint of Thomas Bateman, Clerk, Complainant.

THESE Defendants reserving to themselves all Advantage of Exception to the many Errors and Untruths in the said Bill contained, For Answer unto so much thereof as is material for them or any of them to make answer unto, They severally answer and say, They believe it to be true and do admit, that the Complainant was at or about the Time in the Bill for that purpose mentioned, Presented, Instituted and Inducted into the Vicarage and Parish Church of Whaplode as in the Bill is mentioned; And these Defendants believe that as Vicar of the said Vicarage he is intitled to several Species of Tithes arising, growing and increasing within the Limits of the said Vicarage and the Tithable Places thereof under some Endowment; But as these Defendants never saw the said Endowment, they refer the said Complainant

nant to the same when produced and to such Proof as he shall make thereof; But these Defendants believe that under such Endowment the said Vicar is intitled to the Tithe of Cole Seed and to the Tithe of Wool and Lambs from and under the Number of Five as in the Bill is stated; And these Defendants the Governours of the Goods, Possessions and Revenues of the Free Grammar Schools of Robert Johnson, Clerk, and of the Hospitals of Christ in Oakham and Uppingham in the County of Rutland, Say, That they claim to be and are, as they doubt not to prove, Lay Rectors and Impropriators of the Parish of Whaplode and as such intitled to all manner of Tithes, arising, renewing or increasing within the same or the Tithable Places thereof, Save only and except such Tithes as the said Vicarage is endowed with.

And particularly these Defendants claim to be intitled to all the Tithes of Corn and Grain, Wool and Lambs, save as before is mentioned, Hemp, Flax,

And an Agistment Tithe for all Sheep sold out of the said Parish before the Time of shearing
ing

ing which has been agifted upon any Lands in the said Parish.

And such Agiftment Tithe as to all Sheep fold between the second Day of February——on which Day an Account is usually taken of all Sheep within the said Parish——and the time of shearing, is—and for the time whereof the memory of man is not to the contrary,—hath been, as these Defendants believe,—the sum of threepence for each Sheep.

And all these Defendants say, That the said Defendants the Governours being as they verily believe intitled as aforesaid, did by Indenture duly executed, bearing date on or about the 12th day of October 1769 and made between the said Governours by description aforesaid, of the one Part,

And these Defendants Joseph Blackith and Hurst Fowler of the other Part, Demise unto the said Defendants Joseph Blackith and Hurst Fowler,

All that the Rectory and Parsonage Impro-
prietate of the Parish Church of Whaplode
in the County of Lincoln and the Chancel of
the same; and the Glebe Land to the said
Rectory

62. *The Answer of the Governours of the*

Rectory of Whaplode aforesaid belonging; And also all manner of Tithes of Corn and Grain and all other Tithes, Profits, Fruits, Oblations, Obventions, Emoluments and Hereditaments whatsoever to the said Rectory and Parsonage Improprate of Whaplode aforesaid belonging or in any wise appertaining, or which shall belong or appertain thereunto, or have therewith been commonly used or enjoyed, With all and every the Appurtenances thereof; excepting all Timber Trees and such yearly Contributions of Beans, commonly called Parden Beans, as have been usually paid and given to the Poor by the Farmers of the said Parsonage;

To hold the said Rectory and Parsonage, with the Chancel, Tithes and all singular other the Premises with the Appurtenances, except as aforesaid unto these Defendants Joseph Blackith and Hurst Fowler, their Executors, Administrators and Assigns from the tenth day of the said month of October, called old Michaelmas Day then last past, for Twenty One Years at and under the yearly Rent of 356 l.

And these Defendants say that they do not know nor ever heard that any Agiftment
Tithe

Tithe hath ever been paid within the said Parish or the Tithable Places thereof for any unprofitable Cattle, save as aforesaid to any person whatsoever; But as such Agistment Tithe is due of Common Right, These Defendants respectively as Lay Rectors and Impropriators and as their Lessees, claim to be and are as they were advised intituled to the same, Unless the said Complainant can make out a title thereto—of which Title, if such there be, these Defendants are wholly unapprized.

And these Defendants do not know whether any Lands within the said Parish are exempt from the Payment of Tithes, Though they say that certain Lands claim an Exemption and are called Tithe Free Lands, But how such Exemption is made out these Defendants know not.

And these Defendants believe that the Defendants Samuel Aistrup, Robert Collins, Robert Goulding, John Speechley, James Watson and John Watson, have respectively occupied Lands within the said Parish and had Tithable Matters thereon. But as to the Quantity of Land occupied by them respectively and the
Time

Time during which they have severally occupied the same and the several Species and Quantities of Tithable Matters and Tithes arising therefrom these Defendants crave leave to refer to the Answer of the said last-named Defendants touching the same.

And these Defendants deny all manner of Combination and Confederacy in the Bill charged without that—that there is any other Matter or Thing in the Complainant's Bill of Complaint contained material or effectual for these Defendants to make Answer unto, and not herein and hereby sufficiently answered, confessed or avoided, traversed or denied is true to the Knowledge and Belief of these Defendants.

All which Matters and things these Defendants are ready to aver and prove as this Honourable Court shall award; And humbly pray to be hence dismissed with their Reasonable Costs and Charges in this Behalf most wrongfully sustained, &c. &c.

Notes,

*Notes, &c. &c. on the Answer of the Defendants
the Impropriators and their Lessees.*

THE Answer of the Impropriators, &c. short as it is, is a Full, a Fair and a Candid Answer;—and it is unnecessary to add more than this one obvious Remark upon the whole, viz. That as such, though they do not alledge either to have before received or been intitled to any Payment on Account of Sheep removed out of the Parish after their last Shearing—except for such as were so sold or removed betwixt Candlemas and the next Shearing Time; Nor for the Tithe of the Agistment of barren and unprofitable Cattle,—yet in their Answer, they set up an exclusive Right to the Tithe of both; unless the Plaintiff can make out a Title thereto; that is, They claim to be intitled to all the Tithes in as full and ample a manner in their Answer, as the Plaintiff has claimed to be so intitled in his Bill: And as these Tithes must, if due at all, be due either to the Plaintiff as Vicar, or to these Defendants as Impropriators, they therefore thus leave it to the Court to determine and decree, to which Party they are due.

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DECREE.

D E C R E E.

**King's Remembrancer's Office,
Easter Term, the 14th Year of the
Reign of King George III.**

THURSDAY, APRIL 28, 1774.

WHEREAS Thomas Bateman Clerk did
in Michaelmas Term 1770 exhibit his
Bill of Complaint in this Court against Samuel
Aistrup, Robert Collins, Robert Goulding,
John Speechley, John Watson, James Watson,
Joseph Blackith, Hurst Fowler, and the Gover-
nours of the Free Grammar Schools of Robert
Johnson Clerk and of the two Hospitals of
Christ in Okeham and Uppingham Defen-
dants, thereby setting forth,

That on the 28th Day of October 1768 the
Plaintiff was duly instituted into the Vicarage
and Parish Church of Whaplode in the Coun-
ty of Lincoln; and on the 12th Day of No-
vember

vember following was duly inducted into the same; And afterwards qualified himself for the enjoyment thereof; And had ever since been and then was Vicar thereof, and as such intituled to all Tithes whatsoever arising within the said Parish and the Tithable Places thereof as were by any means payable to the Vicar thereof.

That by Ancient Endowment or other lawful means the Vicars of the said Parish for the Time Being had for a great Number of years been intituled to the Tithe of Hay, and to all Fruits, Revenues and Oblations whatsoever thereto belonging, Except only the Tithes of Corn, Wool, Lamb, Hemp and Flax, which were due and payable to Defendants the Governours, as Improprate Rectors of the said Church, Save that the Vicars thereof by Virtue of such Endowment were intituled to the Redemption of all Wool and Lambs within the said Parish from Number Five and under, but above such Number the same were due and payable to the Improprate Rectors as aforesaid.

The Defendants Aistrup, Collins, Goulding, Speechley, James and John Watson then oc-

cupied and during all or the greatest part of the Time since the 12th day of November 1768 had occupied within said Parish great quantities of Land, on which they respectively had in each year great Quantities of Tithable Matters, the Tithes whereof were justly due and payable to Plaintiff as Vicar of said Parish: Particularly said Defendants had from Time to Time kept fed and fattened on their said Lands great Numbers of Sheep, which they sent to London or elsewhere for Sale; and that all or most of such Sheep being by them kept some time after Shearing thereof; Plaintiff as Vicar by Virtue of said Endowment became intitled to the Tithe Agistment of all such Sheep from the Time of their last Shearing till they were sold off fat or taken out of the said Parish for Sale and before the next Shearing thereof; which Tithe was well worth one Penny per Month for each Sheep, they being mostly of a large size.

The said Defendants in all or most of said years since said 12th Day of November 1768 likewise kept fed and depastured on their Lands within said Parish divers Beasts and other unprofitable Cattle the Tithe of the Agistment whereof Plaintiff ought to have been paid.

That

That Defendants had from Time to Time neglected to pay Plaintiff the several Tithes aforesaid, Infomuch that a large sum of money was then due from each to Plaintiff, and Plaintiff had frequently applied to them to account with him for the same which he hoped they would have done; but the said Defendants combining with the other Defendants the Governours and Impropriators of the Rectory of said Parish, and also with the Defendants Blackith and Fowler the Lessees of said Rectory pretended no such Tithes were as aforesaid due to Plaintiff as Vicar of said Parish—but that the Lands occupied by them were in some manner exempted or discharged therefrom, and at other Times they pretended that all said Tithes were due and payable to the Defendants the Governours as Impropriators or the Defendants Blackith and Hurst as Lessees; Whereas Plaintiff charged the Contrary thereof and that none of the said Tithes before claimed by Plaintiff had at any Time been paid to Defendants the Governours or their Lessees, Or if they had that the Persons so paying the same had done it in their own wrong, and that Plaintiff was well intituled to the same: At other Times Defendants pretended they had paid Plaintiff all said Tithes

which Plaintiff charged they had not done, Nevertheless they refused to make Plaintiff any Satisfaction in respect thereof or to account with him for the same.

Therefore that Defendants might answer the Premises and Account with Plaintiff for all said Tithes and pay him what should appear due thereon, Plaintiff waving all Penalties for Defendants not setting out the same and being contented to accept the single Value thereof and for relief, was the end of the Bill.

To which Bill the said Defendants, being duly served with the Process of this Court, appeared and put in their Answers.

And the Defendants, Goulding, Aistrup, Collins, Speechley, and John and James Watson, by their answer admitted, That the Plaintiff, about the time in Bill mentioned, was duly instituted and inducted into said Vicarage and afterwards qualified himself therein and had ever since been and then was Vicar thereof and as such was intitled to several Species of Tithes but whether by Ancient Endowment or otherwise the Vicar thereof became so intitled

titled they could not set forth being strangers thereto and referred Plaintiff to such Proof as he could make thereof: Had heard and believed that during the Time whereof the Memory of man was not to the contrary there had been yearly and accustomarily such Tithes paid to the Vicar of said Vicarage as after-mentioned, To wit, Tithe of Hay in kind or One Shilling Per Acre or a Composition in Lieu thereof.

Rape Seed, Cole Seed, Mustard Seed and Turnip Seed—the tenth of such seeds upon the Land, Or Shilling Penny—to wit—a Penny for every Shilling for which such Seed is sold, upon request, after being sold; at the choice of the Vicar, he making such choice at the Time of threshing said Seeds.

Said that the Tithe of Corn, Wool, Lamb, Hemp and Flax were, as they believed, due and payable to the Defendants the Governours as Improprate Rectors of said Vicarage or their Lessees and the Defendants Blackith and Fowler were the present Lessees thereof.

Had

Had been informed and believed that the Vicars of said Vicarge were intituled to One Half Penny and no more for every Fleece of Wool and every Lamb under five, called Odds of Wool and Lamb and not to Tithe in kind thereof: All above that Number belonging to the Improprate Rector aforesaid: Believed that within said Parish there had been Time whereof the Memory of man was not to the contrary several Moduses and ancient customary Payments paid and accepted by the Vicar thereof for the Time being in Lieu of the several Species of Tithes following, To wit,

For every Cade Lamb One Halfpenny and no more.

For the Milk of every Milk Cow Four Pence and not the tenth in kind,

For every Calf under seven One Half Penny and no more; and in case the Parishioners and Ground Occupiers had seven Calves in one year then Twenty Pence in Lieu of the Tithe of said seven Calves and not in kind.

For every Calf above seven one Halfpenny each.

For

For every Foal bred in the Parish under seven One half penny and no more; and in case any Parishioners or Ground Occupiers had seven Foals in one year, then Five Shillings and not in kind; And for every Foal above seven One Half Penny each.

For every Barren Beast above one year old which had been kept in the Parish above one Month and then sold or removed; Four Pence yearly in lieu of the Agistment Tithe thereof, and not the tenth part of the Profit.

Of young Pigs, the tenth when three weeks old.

Of Geese, the tenth when green or at Lammas at the choice of the Vicar.

Of young Turkies the tenth.

For every Horse or Beast of a Stranger agisted in said Parish, if but one month, Four Pence yearly by the Person so taking the same to agist,

For a Garden or an Orchard eight Pence yearly and not Tithes in kind.

For every Communicant, above 14 years old, Two pence.

For

For every Dwelling House and Fire Hearth,
Yard or Privy Tithe, otherwise called
Shot and Wax, Two pence Half penny.

Of Reed in kind——or Shilling Penny—to
wit a Penny for every Shilling for which
it sold upon request at the Choice of the
Vicar.

Of Tithe Underwood, Two Shillings in the
Pound.

For every Stock of Bees taken, Four Pence
and not in kind.

For every Stock of Bees standing all the
Winter and not taken, Two Pence and
not in kind.

And Mortuaries as by the Statute

And that all such Payments were paid yearly
at Easter or afterwards on Demand thereof.

Said that during the Time in the Bill they
had respectively occupied within said Parish
and Tithable Places thereof divers Quantities
of Land.

The Defendant Goulding said he Occupied
in 1768——1769——and 1770 three Hundred
and forty one Acres.

The

The Defendant Aistrup in 1768 occupied 141 Acres——in 1769——149 Acres, and in 1770—156 Acres, exclusive of 91 Acres and One Rood of Meadow and Pasture Land in eight Pieces called Park Coates, which were Tithe Free and which he occupied in 1768—1769 and 1770.

The Defendant Collins in 1768—1769—and 1770 occupied 141 Acres.

The Defendant Speechley in 1768 occupied 121 Acres——in 1769——114 Acres, and in 1770—107 Acres.

The Defendant John Watson in 1768——1769——1770 occupied 190 Acres, and in 1770—215 Acres.

The Defendant James Watson in 1768—1769—and 1770 occupied 117 Acres and Two Roods.

Said they had in a Schedule to their Answer set forth an Account of such Sheep as were from Time to Time fattened on their Lands they so occupied in the said Parish in each year
and

and the Time when such sheep were so sold or removed therefrom since the Plaintiff's Induction to the Time of filing this Bill.

Believed that the Improprate Rectors of said Parish or Their Lessees had, from Time whereof the memory of man was not to the Contrary been intituled to and had received from the Parishioners and Inhabitants of said Parish and did then receive from Defendants and all other the Inhabitants thereof the yearly Tithes following, To wit,

Corn,—Wool,—Lamb,—Hemp and Flax in kind: And an Agistment Tithe for all Sheep sold out of the said Parish between Candlemas and Shearing Day which had been agisted on any Lands therein—except those which were Tithe Free—of Threepence per head; And also a Composition Tithe of one Fleece in the Hundred, reckoning Six Score to the Hundred, every month for all Sheep which were brought into said Parish after the second of February and shorn therein—upon which Day an Account of such Sheep is usually taken by the Improprate Rectors or their Lessees.

Admitted,

Admitted, That during the Time in the Bill, they severally fed and depastured Sheep which were shorn in the said Parish and afterwards depastured on Lands therein and then sold off fat or otherwise disposed of—an account whereof they had set forth in the said Schedule.

But denied that any Agistment Tithe was due to the Plaintiff in respect thereof—For that all the Sheep that were so from Time to Time fed, sold or removed, were as often replaced by fresh Ones, purchased by Defendants and depastured on their said Lands in their stead and continued so thereon in course till the next Shearing Day, when they paid a full Tithe in kind for the same to the Impropriators or their Lessees.

Believed that whenever any Sheep had been shorn in said Parish and depastured on their Lands after Shearing thereof and afterwards sold or removed therefrom before the then next Candlemas or Counting Day that no Agistment Tithe was ever paid or demanded either by the Impropriators or their Lessees or by the Vicar thereof; But that such Tithe Wool in kind was
always

always understood as a Compensation or Satisfaction to such Occupier, he having paid a full year's Tithe of Wool, though such Sheep had not been depastured more than half a year, which was frequently the Case.

The Defendant Aistrup said that he and his late Father were Tenants or Lessees of the Improprate Tithes for Forty Years before the present Lessees Blackith and Fowler; and during all such Time it was understood that the Parishioners in consideration of paying a full Tithe of their Wool for all Sheep brought in after clipping Day and before Candlemas and afterwards clipped in the said Parish that they were not intitled to receive any Agistment Tithe for such Sheep; Nor did they ever receive or demand any, By Reason such Sheep which were shorn paid their whole year's Tithe to the Impropriators.

Admitted that they had kept on their Lands during the Time in the Bill Divers Barren Beasts which were fattened thereon and afterwards sent to London or other Places for Sale: And that for Time immemorial there had constantly been paid to the Vicars of said Parish Four Pence for every

every Beast so sold or removed in Lieu of Agistment Tithe thereof Provided such Beast was above a year old, and had been agisted therein above one Month, But not otherwise.

Said they had in the Second Schedule to their Answers set forth the Exact Number of Barren Beasts which were fattened on their Lands during the Time in the Bill; But at what particular Times they were sold or removed therefrom they could not set forth having kept no account thereof.

Denied they ever refused to account with or pay Plaintiff all or any of the Tithes Oblations and Obventions as were due to him in Right of his Vicarage.

On the Contrary they believed and doubted not to prove that before filing of Plaintiff's Bill they respectively offered to pay and caused all such Tithes and other Emoluments as were due from them to Plaintiff since his Institution to said Vicarage to be tendered him and which Sums so tendered they had set forth in the Third Schedule to their Answer.

That

That at the Time such Tenders were made they believed that Six Pence halfpenny was offered Plaintiff for each of their Dwelling Houses and Fire Hearths,—commonly called Shot and Wax—for the year 1770—But had since been informed and doubted not to prove that Plaintiff was intitled to no more than Two Pence halfpenny for each House and Fire Hearth, which Sum they then offered to pay Plaintiff and no more.

The Defendant Aistrup said, He occupied 91 Acres and One Rood of Arable Meadow and Pasture Land in Eight Pieces,—called Park Coates—abutting on Lands some Time since of the Earl of Buckinghamshire on the East—Sparrow Hawkes Lane on the West and North; and on the Hundle Free Bank on the South: Which Lands he believed had been Time immemorial held and discharged of and from the Payment of Tithes, As being appendant to and formerly belonging to the Abbey or Monastery of Croyland in Lincolnshire at the Dissolution of which such Lands were by such Abbey held free and discharged from Payment of Tithes, the same being one of the greater Abbies, by Virtue of the Statute of the

31st

gift of King Henry the Eighth, and that no Tithes whatever were payable for or in respect of such Lands, but were discharged therefrom.

That neither Defendant nor any other Occupier thereof as he knew or believed ever paid any Tithes for said Lands since the dissolution of said Abbey or within memory to any Impropiator, Rector, or Vicar whatsoever; and therefore had not set forth an Account of his Sheep and other Cattle fed or depastured thereon.

And the Defendants the Governours of the Free Grammar Schools of Robert Johnson Clerk and the Defendants Blackith and Fowler their Lessees by their Answer admitted that Plaintiff was at the Time in Bill, presented, instituted and inducted into said Vicarage and as such was intitled to receive Several Species of Tithes under some Endowment thereof, But not having seen the same they referred Plaintiff to such Proof as he could make thereof.

Believed that under such Endowment Plaintiff was intitled to the Tithe of Cole Seed and

F

Wool

Wool and Lamb when under Five and not otherwise.

Defendants the Governours said they claimed to be, as they doubted not to prove, Lay Rectors and Impropiators of said Parish and as such are intitled to all Tithes—Except such as the Vicarage was Endowed with—they particularly claimed all the Tithes of Corn and Grain, Wool and Lamb—save such as before mentioned—Hemp and Flax and an Agiftment Tithe for all Sheep sold out before Shearing which had been agifted on Lands within said Parish, which Agiftment Tithe as to such Sheep sold between the second of February, the usual Day of taking an account thereof, and the Time of Shearing thereof, was and from Time whereof the Memory of man was not to the contrary, had been as they believed, three Pence for each Sheep.

All the Defendants said that the Defendants the Governours being so intitled as aforesaid did by Indenture dated the 12th Day of October, 1769 demise to Defendants Blackith and Fowler, all that the Rectory and Vicarage Improprate of the Parish Church of Whaplode
and

and the Chancel of the same and the glebe thereto belonging and also all Manner of Tithes of Corn Grain and all other Tithes whatsoever to said Rectory and Parsonage belonging or appertaining, Except all Timber Trees and annual Contribution of Beans commonly called Pardon Beans usually paid and given to the poor by the Farmers of said Parsonage, To hold same to Defendants Blackith and Fowler from the Tenth of October then last for 21 Years at the yearly Rent of 365 l.

Know not or ever heard that any Agistment Tithe was paid in said Parish for unprofitable Cattle to any Person whatsoever—save as aforesaid—But that such Agistment Tithe is due of common Right to Defendants as Lay Rectors and Impropriators and which they claimed to be intitled to.

Know not whether any Lands in said Parish were exempt from Payment of Tithe—or if any such were—how such Exemption was made out.

Believed the other Defendants had occupied Lands in the said Parish and had Tithable

Matters thereon, but what Quantity thereof or how long they had occupied the same or the several Species of Tithable Matters arising therefrom they knew not, but referred themselves to the Answer of the other Defendants the Occupiers for an Account thereof.

And all these Defendants denied Combinations and concluded their Answers with the general Traverse.

To which Answers of the said Defendants the Plaintiff replied; and the said Defendants rejoined; and the Cause being at issue, Divers Witnesses were examined as well on the Part of the Plaintiff, as on the part of the Defendants the Occupiers of Lands within the said Parish of Whaplode;—Whose Depositions being duly published and this Cause being put into the Paper of Causes,

Came on to be heard in the Exchequer Chamber at Westminster on Thursday the 21st Day of April Instant before the Right Honourable Sir Sidney Stafford Smythe Knight, Lord Chief Baron; George Perrot, Esq; Sir James Eyre, Knight;

Knight; and Sir John Burland, Knight; the three other Barons of this Court;

When upon opening the Matter of the Plaintiff's Bill by Mr. Ainge of Council with the Plaintiff; the Answer of the said Defendants the Governours and Lessees by Mr. Kenyon; and the Answer of the Defendants the Occupiers by Mr. Holist their Council; And upon hearing Griffith Price, Esq; one of his Majesty's Counsel, learned in the Law, and the said Mr. Ainge of Council with the Plaintiff; and reading the Answers of the said Defendants the Occupiers and the Depositions of Henry Hull; An Endowment marked Letter A from the Registry of the Bishop of Lincoln—The Induction of the Plaintiff to said Vicarage of Whaplode: And the several Depositions of John Torner, Richard Edifon, William Park and five more Witnesses on behalf of the said Plaintiff: And upon hearing John Skynner, Esq; one of his Majesty's Counsel learned in the Law, on behalf of the said Defendants.—And reading the following Evidence on their Behalf, To wit, The Depositions of Joseph Greathead, Robert Busk, Henry Tatam, John Taulks, and Shadworth Smith;

The further Hearing of this Cause was adjourned to Monday the 25th Day of April Instant, When upon reading further Evidence for the said Defendants, by Consent, Copies of three Terriers from the Registry of the Bishop of Lincoln, The first in 1690—The second in 1706 and the third 28th June 1709—And upon hearing Mr. Madocks and the said Mr. Holist of Counsel on Behalf of the said Defendants the Occupiers ;—And the said Mr. Kenyon on behalf of the Defendants the Governours and Lessees of the Free Grammar Schools of Robert Johnson Clerk and the two Hospitals of Christ in Okeham and Uppingham and upon hearing the said Griffith Price in Reply ;—This Cause was further adjourned over to this Day for the Opinion of the Court : And this Cause standing in the Paper of Causes accordingly,

It is thereupon, This Day Ordered and Decreed by the Court, That the Plaintiff's Bill was against the Defendants the Impropiators of the Vicarage and Parish Church of Whaplode be and the same is hereby dismissed out of this Court without Costs.

And

And it is further Ordered, adjudged and decreed by the Court, That an Account be taken of what is due to the Plaintiff for the Tithe of Agistment of All Sheep which were kept fed and depastured on the Lands occupied by the said Defendants Samuel Aistrup, Robert Collins, Robert Goulding, John Speechley, John Watson and James Watson, during the Time in the Bill mentioned; and by them fattened and sold off or otherwise disposed of from the Time of their last Shearing, until they were sold off fat and taken out of the said Parish for sale and before the next Shearing thereof,

And that an Account be likewise taken of the Tithe of the Agistment of All Barren and Unprofitable Cattle kept, fed and depastured on the Lands occupied by the said Defendants in the said Parish,

Except only such as were above one year old and which had been agisted within the said Parish above one month, which are to be accounted for at the Rate of Four Pence per head in Lieu and Satisfaction of such Agistment Tithe according to the Modus or Customary

mary Payment in the said Defendants the Occupiers Answer mentioned.

And it is hereby referred to Francis Ingram, Esq; the Deputy to his Majesty's Remembrancer of this Court to take the said Account.

In taking whereof he is to make to each Party all just Allowances And for the better taking of the said Account All Parties are to produce before the said Deputy Remembrancer all Books, Papers and Writings in their Custody or Power relating thereto; and are to be examined upon Interrogatories touching the same as the said Deputy Remembrancer shall direct: And the said Deputy Remembrancer is to be armed with a Commission—and one or more Commission or Commissions may issue into the Country for the Examination of the said Parties or Witnesses touching the said Account, if necessary.

And if any special Matter shall arise in taking the said Account the said Deputy Remembrancer is at liberty to state it to the Court: And the said Deputy Remembrancer

is

is to make his Report therein with all convenient speed;

And the Cause is to be continued in the Paper of Causes to be further heard upon the coming in of the said Report.

And it is further Ordered and Decreed that that no Costs be paid by either Party to this Time, but that the subsequent Costs and all further Directions herein be and are hereby reserved till after the coming in of the said Report.

F O W L E R for Plaintiff.

By Order of the
Deputy Remembrancer.

N O T E S,

mary Payment in the said Defendants the Occupiers Answer mentioned.

And it is hereby referred to Francis Ingram, Esq; the Deputy to his Majesty's Remembrancer of this Court to take the said Account.

In taking whereof he is to make to each Party all just Allowances And for the better taking of the said Account All Parties are to produce before the said Deputy Remembrancer all Books, Papers and Writings in their Custody or Power relating thereto; and are to be examined upon Interrogatories touching the same as the said Deputy Remembrancer shall direct: And the said Deputy Remembrancer is to be armed with a Commission—and one or more Commission or Commissions may issue into the Country for the Examination of the said Parties or Witnesses touching the said Account, if necessary.

And if any special Matter shall arise in taking the said Account the said Deputy Remembrancer is at liberty to state it to the Court: And the said Deputy Remembrancer

is to make his Report therein with all convenient speed;

And the Cause is to be continued in the Paper of Causes to be further heard upon the coming in of the said Report.

And it is further Ordered and Decreed that that no Costs be paid by either Party to this Time, but that the subsequent Costs and all further Directions herein be and are hereby reserved till after the coming in of the said Report.

F O W L E R for Plaintiff.

By Order of the
Deputy Remembrancer.

N O T E S,

N O T E S, &c.
O N T H E
D E C R E E.

*A*ND the Cause being in issue Divers Witnesses were examined as well on the part of the Plaintiff as on the part of the Defendants the Occupiers of Lands, &c.] Previous to the Hearing of this Cause a joint Commission was issued out of the Court of Exchequer and directed to certain Commissioners appointed respectively by the Plaintiff and Defendants and held in the Country for the Examination of Witnesses in proof of the Allegations of each Party in the Bill and Answer.

Those on behalf of the Plaintiff proved all the requisites as to his being Vicar of the Parish—as to each of the Defendants occupying large Quantities of Land in the Parish, upon which they fed divers Quantities of Sheep and likewise of Barren and Unprofitable Cattle—as to the

the Keeping of the Sheep from the Time of their last Shearing, till the Time of their being fold or removed out of the Parish, being worth what it was stated at in the Bill, &c. &c. But it was not then thought either necessary or requisite to examine any Witnesses on his Part as to the Value of Keeping of Barren and Unprofitable Cattle.

The Depositions of the several Witnesses on the part of the Defendants went to prove, that no other Tithes had ever been paid by the Occupiers of Land in the Parish to the Vicar, nor otherwise, than as stated in their Answer,—nor even demanded previous to the Filing of the Plaintiff's Bill.—That no Tithe of any kind had ever been paid for the Lands, called Park Coats, occupied by the Defendant Aistrup.

And they were advised that it was unnecessary then to examine any Witnesses as to the Value of the Keeping either of Sheep or of Barren and unprofitable Cattle—all edging, That it would be Time enough to enter upon such Examination, after the Plaintiff's Right to such Tithe itself was established by the Decree.—After it *was* established—the Defendants
were

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were permitted to examine Witnesses as to the Value of the Keeping of Sheep and of each Species of Barren and Unprofitable Cattle, under as many different Commissions from the Court of Exchequer as mentioned in the Treatise, Pages 98 and 99. Such was the Sum of the Depositions of the Witnesses here mentioned, on each side—In consequence of which issue was joined and the Cause brought to a Hearing.

An Endowment marked Letter A. from the Registry of the Bishop of Lincoln, &c.] A Copy of this Instrument, as hath before been mentioned is annexed. The Authority it was allowed by the Court; and the particular Passages of it upon which the Plaintiff's Right to the Tithes claimed in his Bill was rested, have already been stated, perhaps satisfactorily, in the Treatise itself. If not, whatever more was said by his most able Counsel;—or which the Author humbly presumes could by any other have been said concerning it—so far as it related to the present objects of Litigation, is so fully and clearly expressed in the Extract of the Letter subjoined to it, that he here begs leave to refer to it instead of any observations of his own.

And

NOTES, &c. on the DECREE. 93

And it is further ordered, adjudged and decreed by the Court, That an Account be taken of what is due to the Plaintiff for the Tithe of the Agistment of All Sheep, which were fed and depastured on the Lands occupied by the said Defendants, &c. &c.] The only objection the Author has ever heard urged against his Treatise on Agistment Tithe, was, That the Decree in his Case did not go so far as the Principles and Positions laid down in it—particularly that—Notwithstanding this Decree—No Tithe ever was or is yet due for the Agistment either of Sheep, from the Time of their last shearing, till the Time they were sold or removed out of the Parish, and before the next shearing; Or for Barren and Unprofitable Cattle—*Whilst kept upon Lands which had in the same year been mown.*

It is to be hoped the Decree itself will satisfy,—and for the future silence, all such Objections.

The Defendants the Occupiers in their Answer have each pleaded that they had in each year occupied divers Quantities of *Arable—Meadow*, and Pasture Land in the Parish.—That *Arable* signifies *ploughed Land*, it is presumed

94 NOTES, &c. on the DECREE.

sumed there cannot be the least doubt; And that by *Meadow*, is meant *mown* Land it is likewise presumed there can be as little.

May it not therefore be freely and fully submitted to the judgment—even to the Determination of every Person capable of understanding plain English, Whether or no the Words of the Decree do not equally extend to the Agistment of such Sheep as have been kept even upon the *Stubbles* of Lands which have in the same year before paid Tithe of Corn in kind; and likewise to such as have been kept upon the *Eddish* or *After grass* of Lands which have in the same year been mown and paid Tithe of Hay in kind; as to such as have been kept only upon Pasture Lands, which have neither been ploughed nor mown in the same year, and consequently paid no other Tithe at all?

The words are, *All Sheep* fed on the Lands, &c. *without any Exception at all.*

In the above sense the Decree was understood both by the Plaintiff and the Defendants—and both their Solicitors—It was understood in the same sense by the Deputy Remembrancer of the
Court

Court of Exchequer, who issued no less than three Commissions out of that Court, under its Authority in order to take an Account of the Value of the Keeping of All Sheep from the Time of their being last shorn—till the Time they were sold or removed out of the Parish on whatever Lands kept during that Time.—And in consequence of such Value being settled in pursuance of such Commissions, the Defendants and all the rest of the Parishioners did account for All the Sheep so kept and afterwards sold or removed out of the Parish, whether upon Arable, Meadow or Pasture Land—without any Exception.

From the Time of their last Shearing till the Time they were sold off Fat and before the next Shearing thereof.] This Decree obviously extends to All Sheep sold or removed out of the Parish *at any Time of the year* after their last Shearing and before the next—i. e. betwixt each Shearing Time.

Both the Defendants the Occupiers and the Defendants the Impropriators in their Answers have set forth, That there had always been paid to the Impropriators or their Lessees an Agistment Tithe, of *Three Pence each*, for all Sheep
fold

96 NOTES, &c. on the DECREE.

sold or removed out of the Parish in each year *betwixt Candlemas and the next Shearing Time*. After this Decree, therefore, it became a matter of dispute betwixt the Plaintiff and the Impropriators whether or no it so far interfered with any of their former Rights, as to order an Account to the Plaintiff for such Sheep as had been sold or removed out of the Parish in each Year *betwixt Candlemas and the next Shearing Time*, for which their Lessees had ever before received an Agistment Tithe of three pence each Sheep, as stated above. The Plaintiff insisted that it did—the Impropriators on the contrary insisted that it did not—and argued that as the Bill as against the Impropriators was dismissed—though it was not so dismissed as against their Lessees—the Decree left all their Rights as it found them. Nor was the Plaintiff able to convince either themselves or their Solicitor that All the Sheep sold or removed out of the Parish after the last Shearing *and before the next*—perhaps the 1st of July—meant any thing more than, The Sheep sold out of the Parish after the last Shearing *and before the next Candlemas Day*, viz. the 1st of February—i. e. From the 1st of July 1774 till the 1st of July 1775

was

NOTES, &c. on the DECREE. 97

was the same as From the 1st of July 1774 till the 1st of February 1775.

At a meeting of several of the acting Governours, the Impropriators and their Sollicitor, and the Plaintiff, at which, after this grand point in dispute had been long argued, neither of the Parties would give up their opinion, each thinking they had the words of the Decree in their Favour. It was therefore at last agreed to refer the Matter to the Opinion and Decision of Counsel,—and the Plaintiff even proposed to leave it to the Opinion and Decision of the Impropriators own Counsel concerned in the Cause—and this Agreement was entered in the Minutes of the Impropriators Books at their Audit. Their Counsel after having the Case three Times stated to him by the different Parties, gave the matter in dispute fully and clearly in favour of the Plaintiff.—The Impropriators however upon the Matter being thus given against them revolted from their Agreement, though entered in their Books; and by their Sollicitor wrote to the Plaintiff that they would not abide by the Opinion of their Counsel, but would have the Matter reheard—and proposed that the Plaintiff should be at half the Ex-

G

pence.

98 NOTES, &c. on the DECREE.

pence. This proposal the Plaintiff did not think proper to comply with; but remonstrated against their infraction of their Agreement and revolting from the Minutes entered in their Books, in such a manner, that one of the acting Governours—the Impropriators soon after informed him by Letter, that if any reflections were cast either upon them, or their Proceedings, as several of them were Peers of the Realm, they would so far exert their Privileges, that the Plaintiff should be brought before the Bar of the House of Lords.

Notwithstanding this Menace, as there was the utmost reason to believe none of the Noble Peers alluded to were at all privy to it, nor even to the Proceedings which occasioned it, the Plaintiff himself brought the matter to a rehearing before the Master in Chancery or Deputy Remembrancer in the Court of Exchequer, by whom it was determined in his favour.

Obvious as this matter may appear, it was, from various circumstances—and after occasioning much Expence, upwards of two years in being determined:—And this Detail of it is here given, in order to prevent any of his

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his Brethren being surpris'd at not being able to convince their Parishioners respecting their Right either to the same or any other new Species of Tithes *before* their having obtained a Decree, when the Author himself met with so much difficulty in doing it after.

And that an Account be likewise taken of the Tithe of the Agistment of All Barren and Unprofitable Cattle kept, &c. on the Lands occupied by the said Defendants in the said Parish, Except only such as are to be accounted for at the Rate of Four Pence per Head in Lieu and Satisfaction of such Agistment Tithe, according to the Modus or Customary Payment in the said Defendants the Occupiers Answer mentioned.] What has already been said relative to those Barren Beasts for which *any thing*; and likewise those for which *nothing* had ever before been paid to the Vicar, may perhaps sufficiently explain this part of the Decree: Left however it should not, it may not appear impertinent here to state the Matter a little differently thus.

The Year with respect to Barren and Unprofitable Cattle ended at Easter. So many Beasts therefore as any Parishioner or Land Occupier

100 NOTES, &c. on the DECREE.

fold out of the Parish betwixt one Easter and another, so many Four Pences were due to the Vicar. And this Modus or Customary Payment extended to Beasts only:—whilst for such Barren Beasts and likewise Horses as had been kept all the year round in the Parish, i. e. from one Easter to another, *nothing had ever been paid*. The difference therefore which this Decree made with respect to them was this—That for every Beast fold betwixt one Easter and another Four Pence was still to be paid to the Vicar as usual: And that all those kept the whole year round, whether barren and unprofitable Beasts or Horses; should pay the Tithe of their Agistment according to the Value of the Keeping of each per Week, &c.

And thus after several Commissions upon the Matter—the Account here ordered, was at last settled by the two Commissioners, the one appointed on the part of the Plaintiff—the other on that of the Defendants and other Land occupiers in the Parish, of which the following is stated as an Example.

Barren

NOTES, &c. on the DECREE. 101

Barren and Unprofitable Cattle sold or removed out of the Parish of W—— between Easter 1775 and ditto 1776——by

	£.	s.	d.
14 Beasts at 4d. each	0	4	8
Barren and Unprofitable Cattle kept in the Parish from Easter 1775 till ditto 1776			

Agist. Tithe

	£.	s.	d.
12 Beasts from 1 to 2 Years old at 1s. each	0	12	0
10 ditto from 2 to 3 at 1s 6d	0	15	0
12 ditto from 3 to 4 at 2s	1	4	0
12 ditto from 4 to 5 at 2s 6d	1	10	0
Colts and Fillies.			
4 from 1 to 2 Years old at 2s 6d	0	10	0
6 from 2 to 3 ditto at 5s	1	10	0

£ 6 5 8

As what has before been said relative to Sheep, is equally applicable to Barren and Unprofitable Cattle, it is unnecessary to add more here respecting them, Than that as there is no Exception whatever in the Decree as to what

Lands such Barren and Unprofitable Cattle had been kept upon—whether upon Meadow or Pasture Land,—that is upon Lands which had in the same year been mown and paid Tithe of Hay in kind, as upon those which had not—the Barren and Unprofitable Cattle upon the former were ordered by the several Commissions issued in Consequence and Execution of the Decree, to account for the Tithe of their Agistment equally with those kept only upon the latter—and under the Sanction of such Decree and Commissions, they did all account accordingly, though it was well known and acknowledged, That many of such Barren Beasts were kept *all the Time* from their being brought into the Parish, till they were sold out of it, upon nothing but the Eddish or Aftergrafs of Lands which had before been mown and paid Tithes of Hay in kind, the same year.

And it is further ordered and decreed that no Costs be paid by either Party to this Time.] It may perhaps seem somewhat singular that the Plaintiff should have an unanimous Decree given in his favour for every thing prayed for in his Bill and yet not be allowed Costs. But so it is—and he knows no other,—nor can he assign
any

any better reason for it, than, That all the claims set forth in his Bill were entirely new—none of them having ever been either paid or demanded in the Parish before,

A Copy of the Plaintiff's Bill of Costs the Reader will find at the End of this Appendix; and it is presumed it would be unnecessary to offer any Apology here for publishing it; as it will enable all who may hereafter be disposed to litigate their Right to this Tithe, to weigh in a juster Scale, the Expence of such a Litigation, against the Acquisition in consequence of it.

The following Bill is confined solely to those in the Court of Exchequer, by which the Plaintiff was ordered to pay his own Costs till the Time of the Decree. But several Commissions were gone through at the Instance of the Defendants a long Time after the Decree, as has before been explained in the Treatise, and much Expence was incurred by them in the Execution of such Commissions both in the Court of Exchequer and Consistory Court at Lincoln; it was however at last agreed betwixt all Parties, That All Matters yet remaining in
dispute

dispute betwixt them should be settled and determined amicably betwixt themselves. In consequence of which, by an Agreement entered into for that Purpose, the Plaintiff was to pay All his own Costs in the Court of Exchequer, but to have all those in the Consistory Court at Lincoln allowed him by the Defendants. See Treatise, Page 101.

Extracted

Copy of the Original Endowment,
Extracted from the Registry of the
Lord Bishop of Lincoln
Archidiaconat'. Lincoln' Ordinatio
Vicariæ de Quappelad

UNIVERSIS Christi fidelibus presentem
Paginam Inspecturis, Ricardus misera-
tione divina Lincoln Episcopus, Salutem in
Domino Sempiternam, ad universitatis vestræ
notitiam per presentem Scripturam volumus
pervenire, Quod cum dilecti in Christo Filii
Religiosi viri Abbas et Conventus Croyland,
gratum Consensum et Assensum claræ et reco-
lendæ Memoræ beati Hugonis quondam Pre-
decessoris nostri ac etiam Sanctissimi Honorii
Ecclesiæ Romanæ quondam summi Pontificis
super *hoc* Confirmationem de Ecclesiâ de Quap-
pelad cujus fuerant et sunt Patroni in proprios
usus habenda, dudum optinuissent sicut in eo-
rum Instrumentis plenius continetur, Nosque
Precibus devotissimis et sæpius iteratis ut hu-
jus Concessioni et gratiæ per dictum Predecesso-
rem nostrum Gravitate Religionis suadente
favorabiliter

favorabiliter eis factæ nostrum consensum et assensum favorabilem in Premissis benignius impartiri curaremus pulsaverint, sollicitaverint ac sollicitudine quam potuerunt interpellaverint, Nos demum devotionem dictorum Religiosorum specialem & sinceram in Domino dilectionem quas erga venerabilem Ecclesiam nostram Lincoln' ipsiusque Pontifices semper habuisse dicuntur, attendentes, eorum dignis postulationibus et precibus animum nostrum duximus facilius inclinare et celerius postulata concedere.

Cum igitur in Monasterio Croyland Religionis Gravitas, Ordinis Observantia, Perseverantia Sanctitatis, ac precipue Hospitalitatis gratia, quæ in eo augere noscuntur ipsum Monasterium reddant et reddere debeant omnibus graciosum, Nos ad memoriam revocantes quod gratis gratiam postulantibus non sit aditus gratiæ precludendus; de Dilectorum in Christo Filiorum Will^{mi}. de Lessington Decani et Capituli nostri Lincoln' Assensu et grato Consensu concurrente divinæ pietatis intuitu et specialiter ad divini cultus Officium inibi ampliandum,—Dedimus, Concessimus et presenti Carta nostra Confirmavimus Monasterio Croyland et Monachis

chis ibidem Deo jugiter Famulantibus Ecclesi-
am de Quappelad in qua Jus optinent Patro-
natus in proprios usus suos in perpetuum possi-
dendam cujus quidem Ecclesiæ proventus et
Redditus in hujusmodi usus convertant et
absque cujuslibet impedimento licite convertere
valeant in futurum, Vicario tamen in eadem
Ecclesia perpetuo servituro, in qua vigere or-
dinamus et constituimus Vicariam de ipsius
Ecclesiæ proventibus pro sua sustentatione
suorumque Ministrorum et pro oneribus sup-
portandis Porcione congrua reservata Porciones
autem dictorum Abbatis et Conventus ac Vi-
carii prelibati per eosdem nobis et successoribus
nostris cum ipsam Vicariam, vacare contigerit,
presentandi, ita duximus, auctoritate pontificali
distinguendas, Videlicet, Quod

Abbas et Conventus supradicti habeant, to-
tam Decimam Garbarum ipsius Ecclesiæ de
Quappelad cum tota dominica Terra Juribus
et Appendiciis suis ad ipsam Ecclesiam qua-
litercumque spectantibus, Totamque Decimam
Lini et Canopi pure et absolute, Insuper habeant
et quiete percipiant totam Deciman Lanæ et
Agnorum de Tota Parochia proveniente;
in Velleribus Lanæ scilicet et Agnorum Cor-
poribus consistentem.

Vicarius

Vicarius autem nobis et Successoribus nostris per predictos Abbatem et Conventum ad dictam Vicariam successive pro Tempore presentandus per hanc Ordinationem nostram, Ratione Vicariæ percipiet et habebit in perpetuum Totum Alteragium dictæ Ecclesiæ de Quappelad et totum Emolumentum ab eodem Alteragio, Quilitercunque proveniens, quocunque Nomine censeatur & in Quibuscunque consistat vel consistere poterit, absolute et inconcusse, Decimis Garbarum Lini, Canopi, Lanæ et Agnorum et etiam Tota Dominica Terra cum Juribus suis et Appendiciis ut predictum est *Duntaxat exceptis*.—Habebit etiam idem Vicarius et percipiet totam decimam Feni totius Parochiæ integre et sine omni diminutione et absque impedimento Abbatis et Conventus Predictorum.

Habebit insuper Redemptiones Lanæ et Agnorum ubicumque in Parochia a numero quinario et sic inferius descendendo computando, Ubi scilicet secundum consuetudinem Loci ad Decimam Velleris et Agni non poterit aliquatenus pervenire, Omnimodo Decima tam Lanæ quam Agnorum ultra quinarium numerum ascendendo proveniente juxta consuetudinem supradictam

prædictam penes præfatos Abbatem et Conventum ut prædictum est totaliter remanente, Super quo dolum et fraudem ab aliquo fieri sub pena Majoris Sententiæ firmiter inhibemus.

Cæterum Ordinamus quod Abbas & Conventus prænominati inveniant Vicariis pro loco et Tempore successive instituendis, Mansum compitentem in loco congruo per eosdem Abbatem et Conventum in Principio primi Vicarii post Cessionem vel Decessum Simonis nunc ipsius Ecclesiæ de Quappelad Vicarii in proximo instituendi Constructum et competenter Edificatum, Deinceps si Casus fortuitus, Necessitas vel Vetustas hoc exigat per Vicarium qui pro tempore fuerit reficiendum vel de novo faciendum cum oportuerit in loco prius assignato. Ordinamus insuper quod primus Vicarius post Cessionem vel Decessum dicti Simonis suo perpetuo per Episcopum instituendus et omnes Successores sui qui pro tempore fuerint Onera ordinaria Episcopalia et Archidiaconalia debita et consueta sustineant et agnoscant, Quodque Libros, Vestimenta et cetera ornamenta Ecclesiastica necessaria et Cancellum Ecclesiæ cum Reparationem indiguerit sumptibus suis reparent et inveniant ac etiam omnes Ministros

Ministros ad deserviendum Vicariæ prælibatæ necessarios exhibeant et sustineant: Hanc autem Ordinationem nostram in omnibus et singulis Articulis supradictis Volumus et ordinamus vires habere perpetuas, Salvis in omnibus Episcopalibus consuetudinibus et Lincoln' Ecclesiæ dignitate. Ut autem ordinationi nostræ presenti plena Fides adhibeatur et dictis Abbatibus et Conventibus Vicariisque futuris perpetua securitas præparetur presentem Paginam nostro Sigillo fecimus communiri. Actum mense Januarii Anno Gratiae Milessimo Ducentissimo Sexagesimo Octavo et Pontificatus nostri Anno undecimo.

This Copy was taken from the ancient Roll of Institutions and Charters of Richard Gravesend, formerly Lord Bishop of Lincoln' who began to preside over that See in the year of our Lord 1258.

J. B— Dep. Regr.

Though the perusal of the preceding Endowment, exclusive of what has already been said relative to it, might be thought sufficiently satisfactory for the purposes for which it is here produced, yet as the Extract from the following

Extract of a Letter from the late R. G— Esq. 111

ing Letter—the first the Plaintiff received from his Solicitor—states in the fullest and most forcible manner the substance of all that was pleaded at the Hearing respecting his Right under it to the Tithes prayed for in his Bill, and the particular passages of it on which such Right was at last rested in the Decree ;—and at the same Time gives so great a Proof of his Abilities, Modesty, and Integrity, the Author begs leave to publish it here as a Testimony of Gratitude to the Memory of a man, for whom he had every reason to bear the highest Esteem and Respect—but who—to the great Regret of all his Acquaintance and Clients—especially those of the Clergy—is now no more.

Extract of a Letter from the late R. G—

Esq; to the Rev. Mr. B—

“ The Endowment is full, clear and explicit.

“ By it the Abbot and Convent of Croyland

“ are to have All the Tithes of Corn of your

“ Church—Flax, Hemp, Wool and Lamb, in

“ velleribus Lanæ scilicet et Agnorum corpo-

“ ribus consistentem. This is the whole Tithe

“ that the Impropriators have granted to them

“ by that Instrument.”

The

" The Vicar is thereby intituled to all the
 " Alterage of the said Church, and all Emolu-
 " ment howsoever arising or coming from such
 " Alterage, *quocunque nomine censeatur et in qui-*
 " *buscunque consistat vel consistere poterit, absolute et*
 " *inconcusse*—then comes the Exception—*Deci-*
 " *mis Garbarum, Lini, Canopi, Lanae et Agnorum,*
 " *et etiam tota Dominica Terra cum Juribus suis et*
 " *Appendiciis ut predictum est,—Duntaxat Ex-*
 " *ceptis.*"

" This is the whole of the Endowment that
 " is material to the present question."

" Supposing a Litigation to ensue concern-
 " ing Agistment Tithe, the questions, would, in
 " my Opinion, be two,"

" 1. Whether such Tithe is due of common
 " Right, none having ever been paid? And"

" 2. If due, Cui?

" The First is an indisputable legal Position,
 " that such Tithe is due Commune Jure and
 " prima facie, of course to the Incumbent.

" Are there any words in the Endowment
 " whereby such Tithe is granted to the Abbot
 and

“and Convent and consequently to the Impro-
 priators. Certainly none. The Words *Gar-*
barum, Lini et Canopi, will not carry the Tithe
 contended for. The Words *Lane et Agno-*
rum are particularly explained by the En-
 dowment in *velleribus*, &c. as above quoted.
 There is therefore no express grant of this
 Tithe, nor can the Impropropriators by any
 possibility be intitled to more than the above
 five Species of Tithes.”

“Upon this footing I incline strongly to
 think the Incumbent alone is intitled. But
 the Endowment goes further in favour of
 the Vicar.” “It makes use of very general
 and comprehensive Expressions; *qualitercun-*
que proveniens, quocunque nomine censeatur, et in
quibuscunque consistat vel consistere poterit, abso-
lute et incensuisse—and the Exception which
 follows, with the word *duntaxat* added, must
 surely be sufficient to preclude the Impro-
 priators from any claim to the Tithe in
 question; or any other Tithe, except the
 five particularly granted.”

“It is no objection that it never has been
 paid or demanded. That was precisely the

H

“case

“ case in Dr. W——’s suit—and the Counsel
“ against us were ashamed to rely upon so
“ weak an Argument, which all the Barons
“ scouted as soon as mentioned.”

“ It is easy to account for the Terrars being
“ silent as to the Agistment Tithe in Question.
“ The Incumbent possibly never dreamt of it:
“ And the Parishioners,—in case they had
“ known it, were too wise in point of worldly
“ prudence, to put him in mind of it; and
“ thereby render themselves liable to the pay-
“ ment of a Tithe which from the particular
“ mode of stocking their Lands would be a
“ considerable Burthen upon them.”

“ The first recital in the Endowment men-
“ tions Instruments relative to your Parish
“ having been made by Hugh Bishop of Lin-
“ coln and Pope Honorius in favour of the
“ Abbot and Convent of Croyland. Can these
“ be found among the Archives of the Bishop
“ of Lincoln or elsewhere?”

“ I have thrown out my thoughts as above
“ relative to your Business: But being far from
“ Books or any Assistance, I would desire you
“ only

“ only to consider them as my private opinion
“ and pay what regard to them you think they
“ may deserve. I shall be in Town in a month
“ or five Weeks, and should think it advise-
“ able for you to have the Opinion of Counsel
“ before you commence any suit; and more
“ particularly for your own Satisfaction, as
“ well as my Justification, for—though a Law-
“ yer—I should be very averse to engage any
“ Gentleman in a Suit which must necessarily
“ be attended with Expence and Trouble,
“ without his first having recourse to much
“ more able Opinions than it can be supposed
“ I can give. I am, Sir, &c.

“ Tolesby Hall near Stockton
“ upon Tees, August 1, 1769.”

The above Extract from his first Letter it is presumed will be deemed an equal Proof of the late Mr. G—’s Abilities and his Modesty : And it is no more than a Tribute of Justice to add the following of his Integrity—Assiduity and Attention to the Interest of his Clients.

After receiving three or four Letters from the Plaintiff respecting his intended Bill, Mr. G— was pleased to desire that—though at

above an hundred Miles distance from London—he would employ no Attorney in the Country;—that with the Knowledge he had of his own Case, if he would take the Trouble of it, he might himself execute all the Business and give all Information, Instructions, &c. requisite—and thereby save the common—tho’ often enormous Expence, *of a Country Attorney*. Both Prudence and Policy dictated more reasons than one for adopting such advice: And besides the being perfectly informed of the merits of his own Cause all along by the kind Communications of his Solicitor,—and the ground, upon which—through all its Stages—it stood—how much the Plaintiff *probably*, by that means, saved, he leaves it to all those who have been as long engaged in a Cause of a similar kind and of equal magnitude, after comparing his Bill of Costs with their own, to be determined. For by the former it will appear that it was at least five years from the Commencement to the final Conclusion of the Suit—during all which Time it is but an equal Tribute of justice to Mr. G—’s Affiduity and Attention to say here, that—from the institution of the Suit *till his Death*, the Author does not remember his writing one Letter to him to which he did not receive an Answer wrote by himself by the return of the Post.

F I N I S.

In the EXCHEQUER.

The Rev. Thomas Bateman Clerk Plaintiff, and Samuel Aistrup, Robert Collins, Robert Goulding, John Speechley, John Watson, James Watson, Joseph Blackith, Hurst Fowler, the Governours of the Free Grammar Schools of Robert Johnson Clerk and the two Hospitals of Christ in Okeham and Uppingham—Defendants.

THE PLAINTIFF'S BILL OF COSTS.

		£.	s.	d.
1769				
March 6,	Paid Postage of a Letter from you	}	0	0 4
7,	Attending at the Exchequer Office Westminster to search for Bill filed 4 James 2d Thomas Clerk against Edwards and found it and wrote to you thereof		0	6 8
	Paid Clerk in Court his Fee for searching for the above Bill and paid Court Keeper	}	0	10 8
1772				
Mar. 16,	Searching at the Exchequer Office two Hours to see if the above Cause had been proceeded in but could not find that it had and writing to you	}	0	6 8
20,	Paid Postage of Letter with Terriers and the Particulars of your Demands inclosed		0	0 8

Carried over £. 1 5 0

118 PLAINTIFF's BILL of COSTS.

		£.	s.	d.
	Brought over	1	5	0
	Perusing the Terriers and wrote to you in full in Answer	0	6	8
July 24,	Paid for Letter inclosing your Endowment 1s. Ditto Terrier	0	2	0
	Perusing your Endowment care- fully and writing to you my opinion then from the Country 6s. 8d. Ditto and close Copy Case for Council 10s.	0	16	8
Sept. 25 and 26,	Attending in Smithfield in Pur- suance of your Letter to find out one Carter a Salesman—but he being in the Country, attending at his Partner's in St. John's Square and afterwards at Mr. Boys who said the Occupiers Case was laid before Mr. Husley and writing to you thereof	0	6	8
	Paid Mr. Comyn with your Case To his Clerk 2s. 6d. Attend- ing him 6s. 8d. Fair Copy of Case and Opinion 3s. 6d.	2	2	0
	Examining Wright's History of the Antiquities of Rutlandshire to see the Account of the Char- ities of Uppingham and Okeham and writing several Letters to you thereon	0	12	8
1773 Mar. 27,	Attending Mr. Rooke at the Rolls Chapel to search for the Grant and Foundation of the above Charities	0	6	8
	Paid him for search but could not find it	0	3	0
	Carried over	£. 6	8	0

PLAINTIFF's BILL of COSTS. 119

		£.	s.	d.
	Brought over	6	8	0
April 3,	Attending all the morning at the Rolls searching for the above and inspected the Original Grant	0	10	0
	Paid Mr. Rooke for inspecting the same	0	10	6
	Fair Copies of Endowment and Terriers to keep the Original Copies being sent to you to shew the Governours of the Charities	0	7	6
Sept. 15,	Paid for Postage of Letters to this Time *.	0	6	0

MICHAELMAS TERM, 1770.

Taking Instructions for Bill	—	0	6	8
Drawing the same Fo. 39	—	0	19	6
Clofe Copy for your Perusal and Approbation 39	}	0	6	6
Fair Copy for Counsel 39	—	0	6	6
Fair Copy of Endowment and Terriers for ditto	}	0	7	6
Paid Mr. Mansfield to peruse and sign Bill	}	1	1	0
Attending him 6s. 8d. Ingros- singing the Bill Fo. 39, 13s.	}	1	3	8
Parchment and Duty 4s.	}			

Carried over £. 12 13 4

* The Author has here printed his Bill of Costs exactly as it was, at several Times, sent him by his Solicitor, till a little before his Death; and by his Successor for the Time subsequent. The Reader will observe that though this part of it extends till near the latter End of the year 1773, yet as none of the Articles constitute any part of the Proceedings in the Cause, he imagines his Solicitor, for that Reason, kept them thus separate.

120 PLAINTIFF'S BILL of COSTS.

	£.	s.	d.
Brought over	12	13	4
Filing the Bill, allowing and	}	0	7
Fee to Clerk in Court			
Two Subpœnas 9s.—Term Fee	}	0	17
Sollicitor 6s. 8d. Letters and			
Porters 2s.			
Retainer to Mr. Comyn for you	}	1	10
1l. 1s. To his Clerk 2s. 6d.—			
Attending him 6s. 8d.			

HILARY TERM, 1771.

Term Fee, Clerk, and Sollici-	}	0	10	0
tor, Defendants having obtained				
an order for Time				
Letters and Porters — —		0	2	0

EASTER TERM, 1771.

Term Fee Clerk and Sollicitor	}	0	12	0
Defendants having obtained an				
order for six Weeks further				
Time 10s. Letters and Porters				
2s.				

TRINITY TERM, 1771.

Term Fee, Clerk and Sollicitor	}	0	10	0
the Governours Answer being				
filed				
Letters and Porters — — —		0	2	0

Carried over £. 17 4 6

PLAINTIFF's BILL of COSTS. 121

Brought over $\begin{matrix} \text{£.} & \text{s.} & \text{d.} \\ 17 & 4 & 6 \end{matrix}$

MICHAELMAS TERM, 1771.

Term Fee, Clerk and Sollicitor, the Answer of the Defendants, the Occupiers, being filed	}	0	12	0
10s.—Letters, &c. 2s				
Paid Mr. Wyche's Bill attending as a Commissioner, to take the Answer of the Governors on your Behalf and for Expences and Carriage of Answer.	}	0	14	6

MICHAELMAS TERM, 1772.

Paid for Office Copy Defendants the Occupiers Answer	}	4	6	2
Fo. 94.				
Close Copy for you		0	15	8
Paid for Office Copy of the Governors Answer Fo: 15 and Duty	}	0	13	9
Close Copy thereof for you	—	0	2	6
Term Fee Clerk and Sollicitor	—	0	10	0
Letters and Porters	— —	0	2	0

HILARY TERM, 1773.

Replication Duty and filing	—	0	7	4
Copy Rejoinder and Duty	—	0	2	9
Term Fee Clerk and Sollicitor	—	0	10	0
Letters and Porters	— —	0	2	0

Carried over $\begin{matrix} \text{£.} & \text{s.} & \text{d.} \\ 26 & 3 & 2 \end{matrix}$

122 PLAINTIFF'S BILL of COSTS.

Brought over £. s. d.
26 3 2

TRINITY TERM, 1773.

Paid Register for Copy of De-	}	0	2	10
fendants Order to Dismiss				
Drawing Instructions for Coun-	}	0	2	6
sel to shew Cause against the				
Order				
To Council therewith		0	10	6
Attending him and Court—	}	1	10	0
when on your undertaking to				
examine Witnesses and try the				
Cause next Term—Time was				
given us				
Clerk and Solicitor				
Order thereon		0	8	6
Replications (Duty and Filing)	}	0	7	4
to Answer of the Governors of				
the Free Grammar School of				
Okeham, &c.				
Copy Register and Duty, Fo: 4		0	3	8
Term Fee Clerk and Solicitor		0	10	0
Letters and Porters		0	2	0
Drawing Brief of Bill and An-		1	4	0
swers Fo: 148				
Fair Copy thereof 4 Brief Sheets		0	12	0

TRINITY VACATION, 1773.

Perusing Papers and Instructions	}	0	6	8
to enable me to draw Interroga-				
tories for the Examination of				
Witnesses				

Carried over £. 32 3 2

PLAINTIFF's BILL of COSTS. 123

	£.	s.	d.
Brought over	32	3	2
Drawing Interrogatories for the Examination of Witnesses } Fo: 13	0	4	4
Fair Copy thereof to lay before Counfel }	0	2	2
Paid Mr. Ainge to settle and sign them }	1	1	0
Attending him ———	0	6	8
Ingrossing the Interrogatories —	0	4	4
Parchment and Duty ———	0	4	6
Fair Copy of the Brief to you	0	12	0
The like of the Interrogatories	0	2	2

MICHAELMAS TERM, 1773.

Paid for half Commission * to examine Witnesses and Oaths }	0	13	8
Exchanging and striking Com- missioners Names }	0	3	4
Paid bringing up the Depositions	0	5	0

Carried over £. 36 2 4

* The particulars of the Expence of the Plaintiff's part of the Commission here alluded to, the Reader will find subjoined to this Bill. For as the Plaintiff was his own Solicitor upon that Commission, and had the whole Management and paid all the Expences attending it himself, and it therefore made no part of his Solicitor's Bill, he thought it more proper, though somewhat out of Order here,—to print it by itself. He begs leave to observe that it was perhaps the only Commission of such Consequence, and which continued sitting full six Days, that was ever executed, in which, on the Plaintiff's side, not one single Limb of the Law was at all concerned. He was his own Solicitor, and his two Commissioners were—the One a Proctor in the Spiritual Court,—the other, an honest, sensible Country Grazier in the Neighbourhood, neither of whom had ever acted on such an occasion before, nor in all probability ever will again.

124 PLAINTIFF's BILL of COSTS.

	£.	s.	d.
Brought over	36	2	4
Oath of the Messenger	0	2	0
Filing Depositions	0	2	0
Marking Book of Depositions being published	0	3	4
Paid for Copy of Depositions Fo: 194 and Duty	8	17	10
Setting down Cause for next Term	0	3	4
A Distringas and two Subpœnas to hear Judgment	0	13	6
Term Fee and Sollicitor	0	10	0
Letters and Porters	0	2	0

HILARY TERM, 1774.

Drawing Brief of Depositions for Plaintiffs and Defendants Fo: 194	1	12	4
Two fair Copies of Brief, Bill, Answer, and Depositions, Nine Sheets	2	5	0
Two Copies of the Endowment to annex thereto	0	3	4
Ditto of the Terriers	0	2	0
Ditto of Your Instructions which you thought necessary to add	0	5	0
Attending you daily at Cham- bers and elsewhere while you was in Town relative to this Cause	2	2	0
Drawing Instructions for Coun- sel to prove Exhibits Viva Voce at the Hearing	0	2	6

Carried over £. 53 8 6

PLAINTIFF's BILL of COSTS. 125

	£.	s.	d.
Brought over	53	8	6
Paid Mr. Ainge to move	0	10	6
Attending him and Court	0	6	8
Paid Mr. Price with his Brief	6	6	0
Paid his Clerk	0	2	6
Attending him	0	6	8
Paid Mr. Ainge with his Brief	2	2	0
Attending him	0	6	8
Term Fee Clerk in Court and Sollicitor	0	10	0
Letters and Porters	0	2	0
Drawing Instructions for Coun- cel to move to adjourn Cause to the first Day of Causes in next Term	0	2	6
Paid Council to move	0	10	6
Attending him and Court when Cause adjourned	0	13	4

EASTER TERM, 1774.

April 21, Attending Cause—part heard,	0	13	4
Clerk in Court and Sollicitor	0	2	0
Paid Coach hire with the Papers	0	13	4
Attending at Westminster to search for several Decrees and making Abstracts of them—be- ing Cases in point	0	6	10
Paid for order to prove Exhibits	0	2	10
Paid Register for Copy thereof and Duty	0	6	8
23, Attending Mr. Price at his Chambers a long Time to con- sult about this Cause			

Carried over £. 67 12 10

126 PLAINTIFF'S BILL of COSTS.

		£.	s.	d.
	Brought over	67	12	10
April 25, Attending Court when Cause	}	0	13	4
further heard, Clerk in Court				
and Solicitor				
Coach hire with the Papers	—	0	2	0
28, The like Cause heard and De-	}	0	13	4
cree for Plaintiff				
Paid Court Fees	—	0	10	6
Coach Hire	—	0	2	0
Term Fee Clerk in Court and	}	0	10	0
Solicitor				
Letters and Porters	—	0	2	0

TRINITY TERM, 1774.

Paid for Copy of Minutes	—	0	2	6
Clofe Copy thereof for you	—	0	1	0
Drawing Decree Fo: 55	—	2	15	0
Fair Copy for the other side	—	0	9	2
Transcribing fair to enter and	}	0	12	2
Duty				
Copy to keep	—	0	9	2
Term Fee Clerk in Court and	}	0	10	0
Solicitor				
Letters and Porters *	—	0	2	0

Carried over £. 75 7 0

* The Plaintiff's first Solicitor lived only just long enough to pilot his Client within sight of Land ; for he did not long survive the obtaining the Decree, and the Reader will find the Plaintiff had afterwards to ride over a rough Sea, and beat up against a strong shore wind, before he got safely landed.—The Cause after the Decree came into different hands, and in consequence, as it will be obvious, was conducted in a somewhat different manner. The Bill is cast up to this Period to point out to the Reader the whole of his first Solicitor's Charge till after the Decree, viz. 75l. 7s.

The

PLAINTIFF'S BILL of COSTS. 127

Brought over £. s. d.
75 7 0

MICHAELMAS TERM, 1774.

Writing several Times to	}	0	13	4
Plaintiff for Instructions to				
draw his Charge	}	0	13	6
Drawing the Charge For: 27				
and Fair Copy for the Master	}	0	4	6
Close Copy sent to Plaintiff				
Paid for Decree		1	19	8
Warrant on leaving Charge	}	0	3	0
Copy and Service				
Copy—Ordering part of Decree, for the Master	}	0	2	6

Carried over £. 79 3 6

The Plaintiff's whole Expence then of the Suit will stand in abstract thus:

	£. s. d.
Solicitor's Bill till after the Decree - - -	75 7 0
Commission previous to it - - - - -	48 10 1
Solicitor's Bill from the Time of the Decree till the final winding up of the Cause }	49 5 5
	<hr/> 173 2 6

But the Reader ought here to remember that as the Plaintiff was all along his own Attorney in the Country, nothing is here charged for all his Time, Trouble, Writing, Journeys, and many little incidental Expences of which he kept no account—And he begs leave here to observe, That he has reason to believe that no Cause of such Length and Magnitude was ever got through at so little Expence—and he has equal Reason to believe, no one similarly circumstanced will ever be got through for less—but how much more any Bill in the Court of Exchequer of any length and magnitude may occasion either of the Parties, he is so far from being answerable, that he will not take upon him even to hazard a conjecture.

128 PLAINTIFF's BILL of COSTS.

		£.	s.	d.
	Brought over	79	3	6
Dec. 13,	Warrants to proceed thereon, }	0	3	0
	Copy and Service			
	Attending thereon — — —	0	6	8
	Paid for another Copy Decree }	0	12	2
	the former being mislaid			
	Term Fee Clerk in Court and }	0	10	0
	Sollicitor			
	Letters and Porters — — —	0	2	0

HILARY TERM, 1775.

Jan. 25,	Warrant to proceed on Charge }	0	3	0
	Copy and Service			
27,	Attending thereon but not at- }	0	6	8
	tended on the other side			
	Warrant to proceed on Charge }	0	3	0
	Copy and Service			
28,	The like — — —	0	6	8
Feb. 3,	Attending Warrant on Charge }			
	but Master at Defendants re- }	0	6	8
	quest would not proceed thereon			
	without a Commission for Ex- }			
	amination of Witnesses for De- }			
	fendants			
	Writing a Letter to you to ac- }	0	6	8
	quaint you thereof			
	Close Copy ordering part of De- }	0	2	6
	cree for you			
	Term Fee Clerk in Court and }	0	10	0
	Sollicitor			
	Letters and Porters — — —	0	2	0

Carried over £. 83 4 6

PLAINTIFF's BILL of COSTS. 129

Brought over $\begin{matrix} \text{£.} & \text{s.} & \text{d.} \\ 83 & 4 & 6 \end{matrix}$

EASTER TERM, 1775.

Paid for a Copy of the Depositions of the Defendants part after the Decree Fo: 246 and Duty	}	11	5	6
Drawing Brief thereof to proceed upon the Charge				
Fair Copy Brief for my use 4	}	1	3	8
Brief Sheets				
Term Fee Clerk in Court and Solicitor	}	0	10	0
Letters and Porters				
		0	2	0

TRINITY TERM, 1775.

June 21, Warrant for June 26 to proceed on Charge Copy and Service	}	0	3	0
26, Attending thereon and Charge proceeded in				
Same Day Warrants for Thursday 29th Copy and Service	}	0	6	8
29, Attending thereon and proceeded in Charge when Master took further Time to consider of the Allowance				
Same Date,—paid for another Warrant to proceed Copy and Service	}	0	3	0
Drawing Interrogatories for the Examination of the Defendants under the Decree Fo: 12				
		0	4	0

Carried over $\begin{matrix} \text{£.} & \text{s.} & \text{d.} \\ 98 & 2 & 0 \end{matrix}$

130 PLAINTIFF's BILL of COSTS.

	£.	s.	d.
Brought over	98	2	0
Fair Copy thereof for Council } to peruse, settle and sign }	0	2	0
Paid Council therewith —	1	1	0
Attending therefore —	0	6	8
Fair Copy of Interrogatories } for the Master }	0	2	0
Warrant on leaving the same } Copy, Copy and Service }	0	3	0
Warrant to settle the same Copy } and Service }	0	3	0
Another Warrant to settle the } same, Copy and Service }	0	3	0
Paid for Office Copy thereof	0	8	0
Paid the Master for his Report } of allowing Interrogatories }	1	5	0
Signing Report —	0	2	0
Paid Master Ingrossing Interro- } gatories }	0	8	0
Parchment and Duty —	0	2	0
Term Fee 10 Letters and Por- } ters 2s. }	0	12	0
Copy of Mr. Watfon's Account } of Sheep fed, &c. by him in }	0	5	0
Whaplode being very long			
Ditto of Robert Collins —	0	5	0

MICHAELMAS TERM, 1775.

Paid for Copy of the Examina- } tions Fo: 109 and Duty }	4	19	11
Paid for Copy of the Schedule } and Duty Fo: 65 }	2	7	4
Copy of the Examinations for } my own use }	0	18	2

Carried over £. 111 15 1

PLAINTIFF's BILL of COSTS. 131

	£.	s.	d.
Brought over	111	15	1
The like of the Schedule	—	0	10 10
Warrant in Plaintiff's Charge	}	0	3 0
Copy and Service			

HILARY TERM, 1776.

Warrant to proceed on Charge	}	0	3 0
Copy and Service			
Attending thereon--when Three Farthings per Head—was agreed upon for the Agistment of Sheep	}	0	6 8
Wrote to you how to charge Barren Beast Copy of Aistrup's, Goulding's, Collins's, and Wat-son's Examinations and Schedule			
Term Fee Clerk in Court and Sollicitor	}	0	10 0
Letters and Porters			

EASTER TERM, 1776.

Term Fee Clerk in Court and Sollicitor proceedings had	}	0	10 0
Letters and Porters			

TRINITY TERM, 1776.

Term Fee Commission	—	0	10 0
Sept. 23, Fair Copy of your Case with respect to the Construction of the Decree to lay before Mr. Kenyon	}	0	2 6
Paid him therewith and to his Clerk			
Attending him therewith	—	0	6 8

Carried over £. 117 13 3
I 2

132 PLAINTIFF'S BILL of COSTS.

		£.	s.	d.
	Brought over	117	13	3
Sept. 24,	Close Copy of Case with Mr. Kenyon's Opinion thereon for you	}	0	2 6
	You having some doubt respecting the Opinion of Mr. Kenyon and wishing him to revise the same Fair Copy of another Case sent up by you to be laid before him		0	4 0
	Paid him therewith and to his Clerk	}	1	3 6
	Attending him therewith		0	6 8
	Fair Copy of Case with his Opinion thereunder for you	}	0	4 4
	Letters and Porters		0	2 0

MICHAELMAS TERM, 1776.

Warrant to proceed in Plaintiff's Charge Copy and Service	}	0	3	0
Making Extract from your Letter to lay before the Deputy Remembrancer for his Opinion respecting your Claims under the Decree and attending him therewith *		0	6	8

Carried over £. 120 5 11

* The Reader will observe that all the subsequent Expences incurred are merely extraneous and were occasioned by the Governors—the Impropiators and their Solicitors objecting to the Decree's at all interfering with their Right to the Threepence per head, for the Agiltment of all Sheep removed out of the Parish, each year, betwixt Candlemas and Shearing Time, as has before been explained.

PLAINTIFF's BILL of COSTS. 133

		£.	s.	d.
	Brought over	120	5	11
Nov. 26,	Warrant to proceed on Charge	}	0	3 0
	Copy and Service			
Dec. 7,	Warrant for the Master's Opinion on the Construction of the Decree respecting Yours and the Impropiators different Rights,	}	0	3 0
	Copy and Service			
12,	The like Copy and Service	—	0	3 0
17,	Attending the Deputy Remembrancer for his Opinion on the Words of the Decree when he was of opinion the Plaintiff was entitled	}	0	6 8
	Drawing a Certificate of the Master's Opinion to be signed by myself and Defendants Solicitor			
	Two Fair Copies thereof	—	0	1 0
	Attending Defendants Solicitor several Times to sign the same	}	0	13 4
	Term Fee Clerk in Court and Solicitor			
	Letters and Porter	—	0	2 0
	Writing several Letters to you in the Course of this Cause and advising you how to conduct yourself therein and paid Coach hire, Postage of Letters, Messengers and other Incidental Expences	}	2	2 0
Total		£.	124	12 5

Expence of the Plaintiff's Part of the Commission previous to the Decree in the Court of Exchequer, in the Cause of Bateman against Aistrup and others, holden at Fosdike from Monday the 1st till Saturday the 6th Day of November 1773—both Days inclusive

	£.	s.	d.
To Commissioner F——— fix Days Attendance and two Days Journey—one coming, the Day before to attend—the other the Day after, returning from the Commission	8	8	0
His Expences on the Road —	1	15	6
To Commissioner N——— fix Days Attendance	6	6	0
To 1st Clerk to the Commis- sioners 8 Days	4	4	0
2d ditto—to ditto—4 ditto —	2	2	0
To Mr. B—— Deputy Register for exhibiting on Commission the Original Endowment and Terrars	2	2	0
To Parchment for Engrossing Depositions	0	9	0
To Expences of Evidences at- tending	2	1	6
Landlord's Bill on Plaintiff's Account during the sitting of the said Commission--6 Days	19	17	1
Servants on Plaintiff's Account	1	5	0
	£.	48	10 1

T H E E N D.

E R R A T A.

Page. Line.

- 21 21 for *Qualiterumque*, read *Qualitercunque*.
— 23 for *absolute inconcussa*, read *absolute et inconcussa*.

